

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2006 Quadrennial Regulatory Review – Review of)	MB Docket No. 06-121
the Commission’s Broadcast Ownership Rules and)	
Other Rules Adopted Pursuant to Section 202 of)	
the Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review – Review of the)	MB Docket No. 02-277
Commission’s Broadcast Ownership Rules and)	
Other Rules Adopted Pursuant to Section 202 of)	
the Telecommunications Act of 1996)	
)	
Cross-ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in Local)	
Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

**COMMENTS OF TRIBUNE COMPANY ON
FURTHER NOTICE OF PROPOSED RULEMAKING**

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Introduction and Summary.

For more than 30 years, based solely on the theoretical assumption that separate ownership of media outlets always will enhance diversity, the newspaper-broadcast cross-ownership rule (the “Rule”)¹ has prohibited the common ownership of a daily newspaper and a co-located television station. As Tribune demonstrated in its comments in this proceeding five years ago, the Rule has too long prevented the public in the vast majority of markets from

¹ 47 C.F.R. § 73.3555(d) (2002).

receiving access to the highest quality news and public affairs programming that has been the hallmark of those few local newspaper-broadcast combinations that have been permitted.² When it adopted the Rule in 1975, the Commission recognized that newspaper publishers had a history of providing superior news and public affairs programming on their broadcast stations. Nonetheless, despite the complete absence of any evidence of harm from cross-ownership, the Commission adopted the Rule in the hope that it would foster gains in diversity, with whatever effects on the presentation of public-interest programming that might follow.³

As the Commission has recognized, the media marketplace has changed dramatically since the Rule was adopted more than 30 years ago. In 1975, UHF television and FM radio services were in their infancy; cable television was a fledgling service available in a few markets primarily to improve reception of local broadcast stations; HBO became the first TV network to transmit its signals via satellite when it showed the “Thrilla in Manila” boxing match between Muhammad Ali and Joe Frazier; and the first personal computer (called Altair and sold by kit for home assembly) was featured in the January 1975 issue of *Popular Mechanics*. In that

² In its December 2001 comments in this proceeding, filed just months after the September 11 attacks, Tribune demonstrated that combined newspaper and television stations can add immeasurably to broadcast news coverage. See Comments of Tribune Company, December 3, 2001, at 2. *Newsday* reporters at Ground Zero provided eyewitness telephone accounts of the attacks and their immediate aftermath to WPIX, New York, and to other Tribune television stations across the country. In the days that followed, *Newsday* and other Tribune daily newspaper reporters provided live coverage of events in New York City, Washington, D.C., and overseas, offering a distinctly local perspective and expanding the public discourse. It is well accepted that neither stand-alone television stations nor even television groups simply can afford the depth and texture of reporting to local communities that daily newspapers can provide with their larger staffs, expert correspondents and greater newsgathering resources.

³ During the five years that followed the filing of Tribune’s comments in this proceeding, Tribune’s newspaper-broadcast combinations have continued to provide extraordinary coverage of local, national and world events, all with a local perspective. On a day-to-day basis, these commonly-owned media operations have added insights and depth to reporting on gang violence and gubernatorial elections in Los Angeles, a hotly-contested Senate primary in Connecticut, and to the rebuilding of Ground Zero in New York City.

year — 1975 — Altair’s creator began work with Bill Gates and Paul Allen, ultimately leading to the creation of Microsoft. The world has changed since these “start-ups” began in 1975.

Today, cable television and other multichannel video program distribution systems are ubiquitous and offer subscribers hundreds of channels including content on-demand. Most television viewers receive video programming via cable or satellite (largely unaware of the difference between broadcast and non-broadcast service and few knowing the difference between “UHF” and “VHF”). Digital terrestrial and satellite radio industries are launching service to millions of listeners. Personal computers are carried around in courier bags and backpacks, ready to provide video, data and information service, often wirelessly, at the push of a button. As Tribune has demonstrated in the past, major and medium-sized markets now host a panoply of television and radio stations, cable and satellite channels, and most recently, Internet sites, all of which offer news, information and entertainment. The public has instantaneous access to local and distant publications of every kind on the World Wide Web, and the choice of countless audio and video program services, via a variety of electronic devices, such as home computers, work computers, laptops, hand-held wireless devices and cell phones.

These developments have led Commissioners on both sides of the aisle for more than a decade to advocate changing the Rule to permit newspaper-broadcast combinations.⁴

After exhaustive inquiry at Congressional direction, the Commission at long last concluded in its

⁴ See, e.g., *1998 Biennial Review Order*, 15 FCC Rcd. 11058, 11154 (2000) (separate statement of Commissioner Powell) (“I must also respectfully dissent from the majority’s conclusion that the newspaper/broadcast cross-ownership rule continues to serve the public interest”); *Renaissance Communications*, 12 FCC Rcd. 11866, 11894 (dissenting statement of Commissioner Quello) (the Rule is “out-dated, over-regulatory, and all too often flies in the face of common sense”); *Capital Cities/ABC, Inc.*, 11 FCC Rcd. 5841, 5851 (1996) (separate statement of Chairman Reed E. Hundt) (“The [Rule] is right now impairing the future prospects of an important source of education and information: the newspaper industry.”).

*2002 Biennial Review Order*⁵ (adopted in June 2003), that the Rule is no longer necessary to protect the public interest. More particularly, the Commission found, after extensive study, that the Rule is not necessary to promote competition or localism, and that its repeal would promote better overall local news coverage and would not threaten diversity of viewpoint or programming.⁶ The Commission replaced the Rule with a set of cross-media limits that permitted common ownership of broadcast stations and daily newspapers in most markets, including the largest and most diverse markets in the nation.

The United States Court of Appeals for the Third Circuit upheld the elimination of the Rule, as well as the Commission's conclusions underlying its repeal.⁷ However, the Third Circuit found certain faults with the method by which the Commission relaxed the Rule and reversed and remanded the *2003 Order*, directing that the Commission conduct further proceedings to justify any specific cross-media limits it adopted. In the more than two years since that court ruled, broadcast stations and the public that they serve have been denied access to the improved coverage that the Commission concluded would result from repeal of the Rule. Opportunities for co-owned newspaper-broadcast enterprises have been left at a standstill, even as competing media and technologies freely advance and erode broadcasters' market shares by presenting new alternatives to their audiences. Tribune submits that the Commission must act expeditiously to repeal the Rule in its entirety or, in the alternative, to reaffirm its adoption of a

⁵ *2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, 13747 (2003) ("2003 Order"), *aff'd in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 125 S. Ct. 2902 (2005) ("Prometheus").

⁶ *2003 Order*, 18 FCC Rcd. at 13753, ¶ 386.

⁷ *Prometheus*, 373 F.3d at 398-400.

rule that permits common ownership of newspapers and broadcast stations in all but demonstrably “at risk” markets, even if that requires a separate order dealing with the Rule apart from other media ownership regulations. Only in this manner will the public interest in access to news and information be served, and will newspapers’ and broadcasters’ First and Fifth Amendment rights be respected.

Tribune demonstrates first that the Commission was correct to repeal the Rule. The Third Circuit’s decision to support the Commission on almost every critical element of its ruling is beyond doubt: a total ban on local newspaper-broadcast ownership is no longer necessary in the public interest as a result of competition. The Third Circuit’s remand did not question the Commission’s fundamental conclusions -- that newspaper-broadcast combinations serve the public interest by providing more and higher quality news and public affairs programming, without adversely affecting competition or diversity.

Second, Tribune addresses the primary concern of the Third Circuit, demonstrating that the Internet has fundamentally changed the way the public obtains news and information, including local news, even since its 2004 remand in *Prometheus*. The Internet revolution has reduced the public’s reliance on newspapers and television stations for news and information, with aggregators of local content like Google, Yahoo, MSNBC and others becoming primary access points for news stories, information on local issues and events, and entertainment programming. Ubiquitous access to websites provided by Internet aggregators has made it possible for the public instantaneously to access hundreds, if not thousands, of new sources of news and information, much of it with a local perspective. The Commission correctly

concluded that even without considering the public benefits from newspaper-broadcast combinations, allowing such combinations would not materially diminish competition or diversity given the many traditional sources of news and information that already exist in most markets (locally published newspapers and broadcast stations).

Third, Tribune re-examines the five markets where it operates newspaper-television combinations,⁸ and demonstrates that a diverse number of media outlets not only has remained, but has increased, during the period of Tribune's cross-ownership. As the Commission concluded in June 2003, after years of review, the combination of a newspaper and a television station in all but the smallest markets enhances diversity and localism by fostering the production of more and better local news and public affairs programming. Tribune's experience demonstrates that in every category reviewed by the FCC in its *2003 Order*, and especially with respect to the Internet, the proliferation of available and competitive sources of information and public discourse has continued. The Commission's conclusions in June 2003 therefore have been further supported, and subject to addressing the The Third Circuit's mandate for a better and more consistent definition of the smallest "at risk" markets, the Commission's repeal of the Rule must stand.

Tribune demonstrates that retention of the Rule would be arbitrary and capricious, and violate the First and Fifth Amendments. Most specifically, review of the five Tribune cross-

⁸ These five markets include New York City, where Tribune has commonly owned WPIX and *Newsday* since 2000; Los Angeles, where Tribune has commonly owned KTLA and the *Los Angeles Times* since 2000; Chicago, where Tribune commonly owned WGN-TV, the *Chicago Tribune*, and WGN(AM) prior to adoption of the Rule in 1975; Miami, where Tribune has owned WSFL-TV (formerly WBZL) and the *Sun-Sentinel* since 1996; and Hartford, where Tribune has owned the *Hartford Courant* and WTIC-TV since 2000 and WTXN since 2001.

ownership markets demonstrates the reasonableness of the Commission's initial decision to permit cross-ownership of a television station and a daily newspaper in large and medium sized markets, where the public has access to more than ten television stations. Indeed, it would be arbitrary and capricious to prevent common ownership of a single television station and a daily newspaper, while permitting duopoly ownership of television stations in these markets. Retention of the Rule would single out newspaper publishers for disparate treatment and violate their First and Fifth Amendment rights.

I. The Commission Correctly Eliminated The Rule.

After seven years of regulatory rumination, the Commission in June 2003, in its *2002 Biennial Review Order*, correctly concluded that the Rule was not necessary in the public interest as a result of competition, and therefore was no longer justifiable under Section 202(h) of the Telecommunications Act of 1996.⁹ After receiving thousands of public comments and conducting a variety of public hearings, the Commission expressly concluded that (1) the Rule “cannot be sustained on competitive grounds, (2) the [R]ule is not necessary to promote localism (and may in fact harm localism), and (3) most media markets are diverse, obviating” the need for “a blanket prophylactic ban on newspaper-broadcast combinations in all markets.”¹⁰ The Commission therefore eliminated the Rule, and concluded that it would only prohibit newspaper-broadcast combinations in markets that were “at risk.” The Commission crafted new cross-media limits for the smallest markets, determined to be “at risk.”¹¹

⁹ *2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, 13747 (2003) (“*2003 Order*”).

¹⁰ *2003 Order*, 18 FCC Rcd. at 13748.

¹¹ *Id.*

A. *The 2002 Biennial Review and the 2003 Order.*

The Commission correctly eliminated the Rule based on the extensive record compiled in this five-year old proceeding. The record contains abundant evidence demonstrating that today's media landscape is characterized by a vast and growing number of outlets, and that competition and diverse programming are more likely to be fostered by eliminating the Rule than by perpetuating it. The Commission concluded that repealing the Rule would not harm competition because newspapers and broadcast stations do not compete in the same economic market,¹² noting that "most advertisers do not view newspapers, television stations and radio stations as close substitutes" and, "at least for purchasers of advertising time," newspapers, television and radio "make up distinct product markets."¹³ Further, to the extent that any advertisers tend to substitute between media, the Commission found that newspaper-broadcast combinations continue to face competition from a number of separately-owned media outlets in their local markets.¹⁴ The Commission thus held that newspaper broadcast-combinations do not "adversely affect competition in any product market."¹⁵

The Commission next found that common ownership of newspapers and television stations actually promotes localism, rather than diminishes it, because "newspaper-owned television stations tend to produce local news and public affairs programming in greater

¹² *FNPRM*, ¶ 24.

¹³ *2003 Order*, 18 FCC Rcd. at 13749.

¹⁴ *Id.* at 13753.

¹⁵ *Id.* at 13749.

quantity and of a higher quality than non-newspaper-owned stations.”¹⁶ In the *2003 Order*, the Commission concluded that the public interest in localism and local programming supported the repeal of the Rule because the “evidence suggests that the rule actually works to inhibit such programming.”¹⁷ The Commission recognized that the core function of newspapers is “to provide in-depth coverage of local news and events” and concluded that “television stations that are co-owned with daily newspapers tend to produce more, and arguably better, local news and public affairs programming than stations that have no newspaper affiliation.”¹⁸ The Commission concluded that “in light of the overwhelming evidence that combinations can promote the public interest by producing more and better overall local news coverage . . . the current rule is not necessary to promote our localism goal, and that it, in fact, is likely to hinder its attainment.”¹⁹

Finally, the Commission concluded that the Rule is no longer necessary to promote viewpoint diversity. Noting that common ownership facilitates the “broadcasting of higher quality programming,” the Commission concluded that a “vast array of media outlets” is now available in most markets. Accordingly, the Commission adopted local cross-media limits to protect diversity in “at risk” markets (those served by only a few broadcast outlets).²⁰ The Commission recognized that “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and

¹⁶ *FNPRM*, ¶ 24.

¹⁷ *Id.* at 13753.

¹⁸ *See 2003 Order*, 18 FCC Rcd. at 13753-54, 13802.

¹⁹ *Id.* at 13759.

²⁰ *FNPRM*, ¶ 24.

qualitatively better news programming and the presentation of diverse viewpoints, as measured by third-parties.”²¹ The Commission then found that “relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.”²² Given the “number, breadth, and scope of informational and entertainment media” that have become available, and because of the “benefits that may accrue from common ownership,” the Commission eliminated the Rule, and replaced it with a new set of cross-media limits.²³

Under the cross-media limits adopted by the FCC, newspaper-broadcast cross-ownership was permitted without restriction in any Nielsen Designated Market Area (“DMA”) served by nine or more full-power commercial and non-commercial television stations.²⁴ In DMAs served by four to eight full-power television stations, newspaper publishers were not permitted to have cognizable interests in more than one television station and half of the number of radio stations authorized under the applicable local limits. No newspaper-television station combinations were permitted in DMAs served by three or fewer television stations. While the FCC’s cross-media limits relied on a complicated “diversity index” that drew upon HHI calculations derived from historic traditional media usage, it also included factors relating to usage of the Internet.

²¹ *Id.* at 13761. The FCC’s conclusions were supported by independent studies commissioned by the FCC. See David Pritchard, *Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (FCC Media Ownership Working Group Report #2), September 2000; Thomas C. Spavins, et al, *The Measurement of Local Television News and Public Affairs Programs* (FCC Media Ownership Working Group Report #7); September 2002; Scott Roberts, et al, *A Comparison of Media Outlets and Owners for Ten Selected Markets* (1960, 1980, 2000) (FCC Media Ownership Working Group Report #1), September 2002.

²² 2003 Order, 18 FCC Rcd. at 13760-61.

²³ *Id.* at 13759.

²⁴ *Id.* at Appendix H.

B. *The Prometheus Order.*

The Third Circuit upheld the Commission’s finding that retaining the Rule was not in the public interest, and rejected attacks on the FCC’s conclusion that the Rule undermined localism.²⁵ The court similarly rejected challenges to the FCC’s conclusion that cross-ownership can increase the quantity and quality of local news programming and that commonly-owned media outlets frequently present diverse viewpoints.²⁶ Although the Court rejected certain elements of the rationale underlying the cross-media limits, including some components of the “diversity index,” it did not question the Commission’s finding that the public interest benefits that can be realized from cross-ownership significantly outweigh the impact of a reduced number of independently owned outlets. Significantly, the Third Circuit did not challenge the Commission’s reliance on the abundance of television stations in large markets to justify the complete repeal of its ban on newspaper-television station cross-ownership.

In remanding the cross-media limits to the Commission, the Third Circuit did not reject the concept of “bright-line” ownership limits. Indeed, the Court agreed that reasoned demarcations between markets could be adopted for measuring diversity. The Court, however, held that the Commission’s “diversity index” placed too much weight on the Internet and irrationally assigned outlets of the same media type equal market shares.²⁷ Specifically, the

²⁵ *Id.* at 398-400. The Court held that “reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest. *Id.* at 398.

²⁶ *Id.* at 399-400. As the Commission recognized in the *FNPRM*, the Court upheld its determination “that the prohibition was not necessary to protect diversity,” and agreed that the Commission “reasonably concluded that it did not have enough confidence in the proposition that commonly owned outlets have a uniform bias” *FNPRM*, ¶ 28. The Third Circuit also held that “it was acceptable for the Commission to find that cable and Internet contribute to viewpoint diversity” in local markets. *Prometheus*, 373 F.3d at 398-400; *FNPRM*, ¶ 28.

²⁷ *Id.* at 402-03.

Court held that the FCC’s “decision to count the Internet as a source of viewpoint diversity, while discounting cable, was not rational.”²⁸ The Third Circuit expressed concern that the FCC failed to recognize the significance of differences between the Internet and traditional media in their presentation of local news and information. Based on the record, the Third Circuit distinguished these sources based upon variances in their apparent “accuracy and depth” in reporting local news, and their ability to aggregate and distill that news.²⁹

The Third Circuit also held that the FCC irrationally assigned outlets of the same media type equal market shares. The Court rejected the Commission’s failure to differentiate between individual media outlets of the same type, based upon their current market position or ratings information, as being inconsistent with the Commission’s use of that data to create the “diversity index.”³⁰ The Court also held that the Commission’s cross-media limits were not rational because of the presence of certain anomalies in the cross-media limits and diversity index.³¹ For example, the cross-media limits permitted combinations in some markets where the presence of multiple low-rated noncommercial educational stations brought the television station count above four or eight stations, even though the adverse impact of the combination on the diversity index was greater than for combinations in markets where fewer television stations, but more commercial stations, were present.

²⁸ *Id.* at 405.

²⁹ *Id.* at 407-08.

³⁰ *Id.* For example, the Court rejected the Commission’s claim that it could not predict future shares for media outlets based upon current ratings data, because it used current ratings data in assigning relative weight to different types of media. *Id.* at 408-09.

³¹ *Id.* at 409-11.

C. *The FNPRM and Tribune's Comments.*

On June 21, 2006, the Commission adopted the *FNPRM*, and asked whether it should revise the cross-media limits adopted in 2003, or whether it could justify those limits based on additional evidence or analysis.³² The Commission said it tentatively decided not to use the “diversity index” to justify changes to the existing cross-ownership rules, in part because some aspects of diversity are too difficult to quantify.³³ The Commission sought comment on how it should approach these cross-ownership limits, and particularly upon how the limits should vary depending on local market characteristics. Last, as part of this remand inquiry, the Commission asked whether the “newspaper/broadcast cross-ownership rule [is] necessary in the public interest as a result of competition?”

Repeal of the Rule is Required. As an initial matter, Tribune submits that the Commission already has answered its last question correctly, resoundingly and persuasively holding in 2003 that repeal of the Rule is required (this finding was upheld by the Third Circuit). The Commission has recognized that common ownership of daily newspapers and television stations (1) has little or no effect on competition, (2) contributes significant new and enhanced coverage of news and public affairs, and (3) except in small “at risk” markets, does not materially diminish viewpoint diversity.³⁴ And these Commission findings, as well as the conclusion that they require repeal of the Rule and substantial revision to the newspaper-broadcast prohibition, not only have been upheld in all material respects by the Third Circuit,³⁵

³² The full text of the *FNPRM* was released on July 24, 2006.

³³ *FNPRM*, ¶ 32.

³⁴ *See supra* at 6-9.

³⁵ *Id.* at 10-11.

but have been reinforced by the continued growth in number and variety of information outlets since 2003. The Commission cannot, and clearly should not, retrace its 10-year long path by giving any consideration to the retention of the Rule or any semblance of its prior blanket ban.³⁶ To do so would be arbitrary and capricious.

Trusting that the Commission will not irrationally reverse course, Tribune will not in these comments repeat at length the facts and arguments that dictate repeal of the Rule. Tribune has maintained consistently that changes in the media marketplace have made restrictions on common ownership of daily newspapers and broadcast stations not only arbitrary and capricious, but unconstitutional as well.³⁷ The record already is replete with evidence showing that the Rule does not promote, but harms, viewpoint diversity and consumers' access to diverse and antagonistic sources of information.³⁸ Tribune also has demonstrated that newspaper-television station combinations provide more and higher quality news, and that joint ventures between independent entities are not a substitute for common ownership.³⁹ The record

³⁶ The Commission cannot retain a rule where it has affirmatively recognized that the facts underlying the rule have changed and warrant a different result, without at a minimum, justifying its departure from its previous conclusions. *See Radio-Television News Directors Association v. FCC*, 184 F.3d 872, 887 (D.C. Cir. 1999) ("*RTNDA*"). In *RTNDA*, the D.C. Circuit concluded that, having conducted rulemakings in which it found that the rationales underlying the political editorial and personal attack rules no longer survived, the Commission could not continue to enforce the rules against its television licensees without further detailed and factual support. The Commission had years earlier concluded that the balancing of objectives underlying those rules no longer supported their continued application. In the same way, the Commission now has concluded that the Rule in its present form disserves the public interest, and must, at a minimum, be significantly revised. Having adopted this conclusion in its *2003 Order*, the Commission cannot now reasonably reverse course and depart from the many detailed findings made in the *2003 Order* after considering academic studies and thousands of comments submitted in this proceeding.

³⁷ *See* Comments of Tribune, filed January 2, 2003; Reply Comments of Tribune, filed February 15, 2002; Comments of Tribune, filed December 3, 2001 ("2001 Tribune Comments"); Reply Comments of Tribune, MM Docket No. 98-35, filed August 21, 1998 (2001 Tribune Comments, Attachment C); Comments of Tribune, MM Docket No. 98-35, filed July 21, 1998 (2001 Tribune Comments, Attachment D).

³⁸ *See, e.g.*, 2001 Tribune Comments, at 37-54.

³⁹ *See id.* at 44-58.

is also filled with evidence that the media marketplace has become so diverse and competitive, adding so many media outlets, that it is no longer in the public interest to deny the public the tangible benefits of commonly-owned local newspapers and broadcast stations.⁴⁰

Cross-ownership prohibition is not in the public interest, and if necessary at all, must be limited to the smallest markets – those that are “at risk.” Tribune submits that the extensive record in this proceeding, especially given the Internet revolution, requires the repeal of the Rule. At the time it adopted the Rule in 1975, the Commission justified its suppression of newspaper publishers’ rights by stating that broadcast station owners also could not own another medium of mass communications in the same local market.⁴¹ The Commission, however, responding to the same changes in the media marketplace that warrant revision of the Rule, has liberalized its other broadcast ownership rules.⁴² In 1999, the Commission relaxed the Rule’s companion “one-to-a-market” rule that prohibited television and radio station combinations in the same market.⁴³ At the same time, the Commission substantially revised the television “duopoly” rule, permitting the ownership of two television stations in the same market where at least eight independently owned stations would exist after the combination.⁴⁴ These rules, both of which were in effect at the time of the adoption of the Rule in 1975, were adopted based on precisely the same rationale that underlies the Rule; they were then substantially modified for

⁴⁰ *See id.* at 7-32.

⁴¹ *1975 Order*, Reconsideration Order, 53 F.C.C.2d 589 (1975).

⁴² 2001 Tribune Comments, 60-69, Attachment D at 8-14.

⁴³ *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd. 12903, 12947 (1999) (“*Television Ownership Order*”).

⁴⁴ *Id.* at 12932.

precisely the same reasons that the Commission adopted when it modified the Rule.⁴⁵ The record in this proceeding demonstrates that such disparate treatment no longer can be supported, and that the public would be best served by permitting common ownership of a daily newspaper and a television station in all but the smallest “at risk” television DMAs.

II. The Internet Has Revolutionized Access To News And Information And Added An Entire New Category Of Competing Outlets Rendering The Rule Obsolete.

A. Technological Changes Since 2003 Confirm The Effect Of The Internet Revolution.

In the *2003 Order*, the Commission briefly acknowledged the growth of the Internet, noting that “news and information are available on the Internet like they have never been available to the public before.”⁴⁶ Given the impact of the Internet on the public’s access to news and entertainment, which has increased dramatically even since the Third Circuit remanded the *2003 Order* in July 2004, Tribune submits that no restrictions on the common ownership of newspapers and broadcast stations are reasonable unless absolutely necessary to protect markets that the FCC finds to be demonstrably “at risk.” The Internet has displaced the public’s reliance on traditional media and transformed the manner in which people access, use and otherwise consume information. Today, when the public wants instant information about practically anything — breaking news, the war in Iraq, the ousting of a corporate CEO, developments in a contested primary or election, sports scores and player injuries, weather and traffic, movie listings and restaurant reviews — the first stop is often a computer with an Internet connection. From there, the world is at the user’s fingertips. From the macro-world to the micro-community, whether keeping informed about the errors in a press report about the President’s service in the

⁴⁵ See *id.* at 2948-50.

⁴⁶ *2003 Order*, 18 FCC Rcd. at 13765-66.

National Guard, or a film star's latest arrest (with or without an accompanying mug shot), or the changes in curriculum at a local high school, or the status of a missing person, the public today has seemingly endless on-line sources that will provide the news and information traditionally aggregated and distilled by local broadcast stations and newspapers — and then some.

In 2003, the Commission recognized the “important role [of the Internet] in the available media mix” as “a commonly-used source of news, commentary, community affairs, and national/international information.”⁴⁷ Since completing the record in the 2002 Biennial Review, online sources of news and information have continued to proliferate in availability, sophistication, and popularity. Internet users now have countless online sources from which to obtain local, national, and international news, political opinion, social commentary, media criticism and information on public affairs, business, science and technology, sports, the arts, entertainment and community events.

Rapid broadband adoption has fueled the growth of the Internet as a primary source of news and information. Indeed, approximately one-quarter of the growth of daily online news consumption since 2002 can be attributed to the rise in residential broadband adoption.⁴⁸ In 2002, the number of Americans with residential broadband access was 20 million, or 10 percent of all adults.⁴⁹ In March 2005, that figure was 60 million, or 30 percent of American

⁴⁷ 2003 Order, 18 FCC Rcd. at 13765-66.

⁴⁸ Pew Internet & American Life Project, Online News, at ii (Mar. 22, 2006) (“Online News”).

⁴⁹ *Id.* at i.

adults.⁵⁰ As of March 2006, home broadband penetration jumped to 84 million, or 42 percent of American adults, an increase of 40 percent in just one year.⁵¹ Today, approximately 50 million Americans obtain news from the Internet on a typical day.⁵² In fact, as of August 2005, consumers in North America spent almost twice as much time each week using the Internet (5.9 hours) as reading newspapers (3.4 hours).⁵³ According to the Pew Internet & American Life Project, the adoption of high-speed Internet access has meant that “[f]or broadband internet users, online news is a more regular part of the daily news diet than is the local paper; it is nearly as much of a daily habit as is getting news from national TV newscasts and radio.”⁵⁴

While traditional media, including local and national newspapers and broadcasters, have established popular websites, countless other online sources unaffiliated with local traditional media entities are also available to Americans, even for local news and information, and on a level playing field. In recent years, for example, Google, Yahoo, AOL and MSN, none of which existed in 1975, have expanded from search engines to content destination portals that aggregate and offer in one place, a variety of content (including local news and information), from thousands of traditional and non-traditional media sources, to become among

⁵⁰ Pew Internet & American Life Project, Home Broadband Adoption 2006, at i (May 28, 2006) (“Home Broadband Adoption 2006”).

⁵¹ *Id.*

⁵² Pew Internet & American Life Project, Online News, at i (Mar. 22, 2006) (“Online News”).

⁵³ eMarketer, Inc., Time Spent with Select Media by Consumers in North America, by Gender, 2005 (in hours per week); Forrester Research (August 2005); ClickZ (August 2005).

⁵⁴ Home Broadband Adoption at i.

the most popular online news websites.⁵⁵ Stated in its simplest form, speakers no longer need a printing press or transmittter to compete with their traditionally capitalized media owners over the Internet.⁵⁶

Portals provide advantages over traditional media, such as the “resources to create networked applications using news feeds, tagging, filtering, related links, mapping, recommendations, comments, and blogging that take advantage of portals’ large registered memberships and multiple services.”⁵⁷ In their simplest form, these enhanced web-browsing functions place the end user in control of all aspects of their information consumption, from identifying their preferred source to the time and place at which they want to access the content. From a media owner or speaker’s perspective, these developments allow any source of news or information to reach the public to the same degree available to a traditional media outlet. To emphasize the impact of these developments, “in 2002, only 3 percent of online users said they

⁵⁵ See Online News at 10 (December 2005 survey revealed that 44 percent of broadband users got their news online from portals such as Google and Yahoo, the second most popular sites after national cable television news sites such as CNN and MSNBC (52 percent)).

⁵⁶ Examples of successful online news and public discourse are plentiful, from The Smoking Gun (www.thesmokinggun.com), to The Onion (www.theonion.com), to The Drudge Report (www.drudgereport.com) to Craig Newmark, creator of craigslist.org, which has numerous local community sites that compete with traditional newspaper services. Indeed, for proof of the proliferation and competition to traditional news outlets, one need look no farther than Craig Newmark’s Blogsite, craigblog (www.cnewmark.com), which provides access to both traditional and non-traditional outlets for local news, and as recently as October 13, 2006, was promoting “great ideas to use the ‘net to pioneer new forms of community news.”

⁵⁷ Jupiter Research, The New Demographics of Online News, at 4 (May 8, 2006). To do this, these portals empower non-traditional sources of aggregated news by offering them large-scale acces to the public; the portal themselves can acquire news from multiple sources and, through numerous links, become dominant sources of branded information. *Id.* Additionally, through the use of these non-traditional portals, users have the ability to integrate headlines and links from various non-traditional websites with their e-mail and other personal electronic applications. *Id.* In September 2002, for example, Google News began offering access to 4,500 leading news sources from around the world. A computer program automatically selects and arranges headlines and photographs and updates the Google News page continuously. The free service allows users to scan, search, and browse news stories with links from each headline to the original story.

used Google for local news; in 2004, that number swelled to 39 percent.”⁵⁸ More recently, Yahoo added more than 400 local news feeds from traditional news outlets in 82 markets and users quickly suggested more than 100 new non-traditional sources.⁵⁹

B. *The Internet Reaches Everywhere – And It Is Local.*

Beyond these leading portals that are not owned by traditional media outlets, there are countless independent websites that provide news and information, enhancing viewpoint diversity, even at the local level.⁶⁰ For instance, in August 2006, of the 28 websites nominated by the Online News Association for its annual journalism awards, six were not affiliated with any traditional media partner: New West, The Center for Public Integrity, SeeingBlack.com, CNET News.com, EurasiaNet.org, The Smoking Gun, and Muckracker.org.⁶¹ According to the Project for Excellence in Journalism, many Americans went to “less traditional information sources, such as Flickr, craigslist, and Wikipedia” during major news events in 2005, including Hurricane Katrina.⁶² Similarly, according to national alternative news site Altnet, which reaches out to “a large and growing audience for progressive ideas and media,” traffic on that site increases on average by 40 percent during major news events such as the invasion of Iraq,

⁵⁸ Newspaper Association of America, Digital Edge Report--*Power Users Plus: Media Shifts, Readership and Replacement Issues*, (September 2004) http://www.moriresearch.com/articles/download/media_shift.pdf.

⁵⁹ PaidContent.org, “Yahoo Launches Local News Beta,” http://www.paidcontent.org/pc/arch/2006_03_20.shtml. (Yahoo News GM states that Yahoo “wanted to signal that this will be a continued evolution. . . . Users have already sent in more than 100 new source suggestions. Blogs and other non-traditional sources are likely additions as are Yahoo’s own social media tools.”)

⁶⁰ See *supra* at 19 n.56 (discussing The Smoking Gun, The Onion, The Drudge Report and craigslist.org).

⁶¹ Robert Niles, “Newspaper dot-coms dominate Online Journalism Award finalists,” Online Journalism Review, Aug. 29, 2006, <http://www.ojr.org/ojr/stories/060829ojas/print.htm>.

⁶² Project for Excellence in Journalism, 2006 Annual Report On the State of the New Media, Executive Summary, at 13.

the 2004 presidential campaign, and Hurricane Katrina.⁶³ Alternative news site NewsMax.com, the website of “the largest-circulation news monthly with a conservative perspective,”⁶⁴ has likewise gained popularity.⁶⁵

While these sites provide predominantly independent news and information on national events, entry into the news distillation business also has occurred at the local level, where websites of alternative news weeklies, such as the *Village Voice* (in New York), the *Chicago Reader*, the *Miami New Times*, and *LA Weekly* are among the most-visited sites in their respective markets.⁶⁶ Nonprofit organizations and professional journalists also have created numerous independent online-only news sources. Examples include:

* Voiceofsandiego.org, “a nonprofit, independent and insightful online newspaper focused on issues impacting the San Diego region,”⁶⁷

* WestportNow, a “non-newspaper, non-broadcast professionally written and edited community news site[]” founded in 2003 as “Westport, Connecticut’s 24/7 news and information source,”⁶⁸

⁶³ Alternet: The Case for Alternet, <http://www.alternet.org/about/> (last visited Sept. 5, 2006).

⁶⁴ Christopher Ruddy, “NewsMax Leads the Way . . . And We Say Thank You,” (Aug. 15, 2005), <http://newsmax.com/archives/articles/2005/8/15/115715.shtml> (last visited Sept. 5, 2006).

⁶⁵ MyMetrix, Key Measures (Local Market) Report, New York, NY (March 2006) (NewsMax.com sites were the 51st most visited sites in the New York market that month).

⁶⁶ News Release, The Media Audit, New York (Jan.-Mar. 2006); News Release, The Media Audit, Los Angeles (Sept.-Oct. 2005); News Release, The Media Audit, Miami-Ft. Lauderdale (Dec. 2005-Mar. 2006); News Release, The Media Audit, Chicago (May-June 2006).

⁶⁷ Voice of San Diego: About Us, http://www.voiceofsandiego.org/support_us/about_us/ (last visited Aug. 30, 2006).

⁶⁸ WestportNow.com: WN About Us, <http://www.westportnow.com/index.php?/Info/about/> (last visited Aug. 30, 2006).

* Barista of Bloomfield Avenue, which provides news and information written and compiled by former *New York Times* and *New York Daily News* writers and other journalists on issues of interest to Essex County, New Jersey residents.⁶⁹

In short, the rise in residential broadband adoption has resulted in not only heavy media consumption, but substantial media *creation*, both by experienced professional journalists and the public at large.⁷⁰

Since the Commission completed its last record on the issue of media cross-ownership, “citizen journalism,” driven primarily by the increasing popularity of and participation in blogging and the publication of web journals, has added countless voices to the daily discourse on issues of the day, whether international, national or local. Technorati, which tracks websites with blogs, has counted more than 45 million blogs worldwide and estimates that the total is doubling every six months.⁷¹ Blogs can take several forms, including “those that post links to other sources, those that compile news and articles,” and/or “those that provide a forum for opinions and commentary.”⁷² A recent Pew Internet & American Life survey (January 2006) found that 39% of American Internet users regularly read someone else’s blog, and that the number of adult bloggers in the United States has tripled in the past two years.⁷³

⁶⁹ Barista of Bloomfield Avenue, <http://baristanet.typepad.com/barista/about.html> (last visited Sept. 5, 2006).

⁷⁰ Pew Internet & American Life Project, *Bloggers: A portrait of the internet’s new storytellers*, at iv (July 19, 2006), <http://www.pewinternet.org>. (“Fully 79% of bloggers have a broadband connection at home, compared with 62% of all [I]nternet users.”).

⁷¹ See <http://technorati.com/weblog>.

⁷² “What the In-Crowd Knows—From Hollywood to Wall Street, Our Guide to the Blogs Insiders Read to Stay Current,” *Wall Street Journal*, D1 (Nov. 16, 2005).

⁷³ *Id.* (citing Pew, *supra* n.22); http://207.21.232.103/trends/Internet_Activities_7.19.06.htm. The popularity of blogging, particularly opinion and commentary blogs, has been attributed largely to the 2004 presidential election. Joe Garofoli, “The Truth About Blogging,” *San Francisco Chronicle*, A1 (July 20, 2006). Indeed, a February-April 2006 Pew Survey found that 8% of American Internet users create their own blogs. *Id.*

In the brief three years since the FCC's *2003 Order*, these web journals and blogs have gained a prominent place in the delivery and consumption of news and opinion regarding important issues, whether they be national or local. Political blogs, for example, allow professional writers, analysts, and most importantly, ordinary citizens, to debate issues by posting original content and content linked from other sites. Among the most influential and widely read political blogs in the United States are Daily Kos, Wonkette, Huffington Post, and Instapundit.⁷⁴ In recent years, bloggers were the first to break several major news stories, including Senator Trent Lott's comments apparently supporting segregation, which prompted his resignation in 2002, and the forged documents that were the basis of CBS anchor Dan Rather's *60 Minutes* story questioning President Bush's military service.⁷⁵ In the closely watched congressional Democratic primary race in Connecticut, days after incumbent Senator Joseph Lieberman attacked his opponent Ned Lamont for owning stock in the military contracting company Halliburton, the blog Firedoglake revealed that Lieberman himself owned shares in mutual funds that held Halliburton stock.⁷⁶

Blogs also provide a forum to express opinions on local politics and issues affecting the community. For example:

* In Minnesota, several blogs cover state and local politics from both sides of the aisle, including Minnesota Democrats Exposed, Centrisity, Checks & Balances, Power

⁷⁴ See www.dailykos.com, www.wonkette.com, www.huffingtonpost.com, and www.instapundit.com.

⁷⁵ Patrick Barkham, How the net closed on Prescott, *The Guardian*, 1 (July 10, 2006).

⁷⁶ Mike McIntire and Jennifer Medina, "In Connecticut, Bloggers Throw Political Curves and Spitballs," *New York Times*, B1 (Aug. 4, 2006).

Liberal, MN Publius, Minnesota Campaign Report, Craig Westover, The Wind Beneath the Right Wing, and Residual Forces.⁷⁷

* In Maryland, two Republican and two Democratic bloggers in Howard County recently announced collaboration on an electronic question-and-answer session to educate voters on the issues before the state's 2006 general election.⁷⁸

These websites, accessed as easily as any site created by traditional media, serve as significant alternative outlets for local news, views and information, abundantly justifying the Commission's conclusion in its *2003 Order* that the Internet serves as a significant alternative source for local news and information.

Moreover, blogging, along with technologies that permit aggregation of news feeds, advanced searching and archiving, the use of external links and mapping, with continuous updates, have given rise to "hyperlocal blogs." These websites, with contributions by citizen and professional journalists, provide news, commentary and information on issues such as local government, public works, schools, high school and college sports, arts and entertainment reviews, and community events. For example:

* New Haven Independent.org is a "five-day-a-week report on news about the City of New Haven, Connecticut, produced by a veteran local journalist, and by you." The website provides daily news reports on the city's neighborhoods, government, crime, schools, businesses, arts and culture.⁷⁹

* Philly Future.org describes itself as "a compendium of the best online writers, narrators, blogs, and commentators in the greater Philadelphia region."⁸⁰ Visitors to the site can get their own weblog with its own address and RSS feed and read other

⁷⁷ Bill Salisbury, "Warning for Democrats: Beware of blog," Saint Paul Pioneer Press, 1A (July 23, 2006). Media-sponsored blogs discussing Minnesota politics include Polinaut, City Hall Scoop, and The Big Question. *Id.*

⁷⁸ Larry Carson, Local bloggers play political role, Baltimore Sun, 1G (Aug. 20, 2006) (citing two blogs entitled Howard County Blog, Hedgehog Report, and Hayduke Blog as blogs focused on Howard County politics).

⁷⁹ New Haven Independent: About N.H.I.org, http://www.newhavenindependent.org/about_us.html/ (last visited Sept. 1, 2006).

⁸⁰ Philly Future, <http://www.phillyfuture.org/about> (last visited Sept. 5, 2006).

Philadelphia blogs, access news from regional media outlets that is aggregated and automatically updated on “The Philly Wire,” access links to city and state government services and city volunteer organizations, and participate in comment threads throughout the site.

* OlyBlog.net is “devoted to hyperlocal news and discussion specifically about Olympia, Washington,” and its contributors are “citizen journalists who care about their community and are tired of the corporate media.”

* Independent Media Center is “a collective of independent media organizations and hundreds of journalists offering grassroots, non-corporate coverage,” with regional sites for Philadelphia, Boston, Seattle, San Francisco and other cities. The San Francisco Bay Area Independent Media Center site, for instance, contains regional pages for the North, East, and South Bay, the Central Valley, the North Coast, and Santa Cruz.⁸¹

* HartsvilleToday was created as a joint effort between a local newspaper and the University of South Carolina School of Journalism and Mass Communications as “a community gathering place so that you can share your news, your stories and your pictures with your Hartsville neighbors.”⁸²

Finally, thousands of local newspapers and broadcasters sponsor forums in which residents can discuss local issues and exchange information about events in their community; examples of these include NJ.com and OregonLive.com.⁸³

Finally, high broadband penetration rates achieved since the release of the FCC’s *2003 Order* have further strengthened already existing advantages of the Internet: transparency, immediacy, and interactivity. In 2005, according to the Project for Excellence in Journalism, podcasts, online video, news, sports, and financial alerts over wireless technologies such as PDAs and mobile phones, Wikis, and blogs became a part of mainstream American society.⁸⁴

⁸¹ <http://www.indybay.org> (last visited Aug. 30, 2006).

⁸² HartsvilleToday, <http://www.hvtd.com> (last visited Aug. 30, 2006).

⁸³ See, e.g., www.nj.com; www.oregonlive.com.

⁸⁴ Project for Excellence in Journalism, 2006 Annual Report on the State of the New Media, Executive Summary, at 13.

According to the Online Publishers Association, there was “wide acceptance” of online video in 2005 and news and current events were the most frequently viewed online video category.⁸⁵

Internet users now have the ability to seek out alternative news aggregators of their choice, whether it be Google, Yahoo or another independent aggregator of national and local news; control the source, amount and type of content they receive; contribute ideas, voice their opinions, and exchange information within and beyond local markets; choose the technology through which they will receive their news, views and entertainment, at home or at work, or on the move by PDA, mobile phone alert, podcast, or other source of a streaming video file. Broadband proliferation will continue to fuel the easy accessibility and popularity of online news sources. Traditional media will compete on an equal footing with these alternative outlets.

Today the Internet without doubt serves as a vibrant source of competitive and diverse alternatives for news and information. Whether it is the growing market presence of aggregators like Google and Yahoo, or the growing number of alternative distillers of news and information, developments over the past several years underscore the need for the Commission to account for the Internet media in crafting cross-ownership rules on the national and local levels. The exponential increases in Internet usage and access to alternative media not only support, but require, repeal of the Rule. They suggest that if any limits on the common ownership of television stations and newspapers are retained, they must be limited to the smallest “at risk” markets. The Commission’s rules must comport with the reality of today’s Internet as a significant independent source of local news and information for millions of Americans.

⁸⁵ Online Publishers Ass’n, From Early Adoption to Common Practice: A Primer on Online Video Viewing” at 11 (March 2006).

III. Newspaper-Broadcast Combinations Enhance News And Public Affairs Programming And Do Not Have An Adverse Impact On The Public's Access To Diverse And Competitive News Sources.

Tribune demonstrated five years ago in its Comments in this proceeding that the increase in the number of traditional media voices since the Rule was adopted undercut any basis for the Rule that existed in 1975.⁸⁶ In these comments, Tribune confirms that the increase in media outlets continues on both the national and local levels. Indeed, in the five local markets where Tribune owns a daily newspaper and a television station, the number and diversity of media outlets have flourished, and the public's access to news and information in these markets has never been greater.

A. The National Media Marketplace Has Continued To Grow Since 2001.

The national media marketplace has evolved and developed over the past thirty years, and has continued to grow since the Commission received comments on the Rule in 2001.

Broadcast Television Stations. The number of television stations nationwide has increased since 1975 and over the past five years — a time during which the television industry has been thought to be mature. Since 1975, the number of licensed full-power television stations has nearly doubled, and low-power television stations have increased from none to nearly 3,000.

	<u>Broadcast Television Station Totals</u>		
	<u>1975</u>	<u>2001</u> ⁸⁷	<u>2006</u> ⁸⁸
Full-power television stations	953	1,678	1,752
Low-power television stations	0	2,396	2,746
TV Stations transmitting digital	NA	insignificant	1,537

⁸⁶ See 2001 Tribune Comments at 7-32.

⁸⁷ See 2001 Tribune Comments at 8.

⁸⁸ See FCC News Release, Broadcast Station Totals As Of March 31, 2006, released May 2006.

As the table shows, in 2001, television stations did not provide significant digital (“DTV”) operations. According to the FCC’s most recent video programming report, as of October 2005, more than 1,500 stations were transmitting a DTV signal, including all 119 of the top-four network affiliates in the top 30 television markets.⁸⁹ The Commission also reported that “[h]undreds of local stations are using their digital channels to provide multicast programming, including news, weather, sports, religious material, music videos and coverage of local musicians and concerts, as well as foreign language programming” and that as early as May 2005, cable system operators were carrying commercial broadcasters’ multicast programming in 50 markets, including at least 7 of the top 10 markets.⁹⁰ As of June 2006, 97 million television households (over 87%) were passed by a cable system offering HDTV service, including all top 100 markets and 203 out of the 210 DMAs.⁹¹

Multichannel Video Program Distribution. As Tribune demonstrated in December 2001, the development of cable television, a fledgling service in 1975, has been the source of the greatest increase in programming options since the Rule’s adoption.⁹² From 1975 to 2001, cable subscribership grew from just under 10 million to nearly 70 million subscribers; in 2001, 68% of television households subscribed to cable service as that service was available to more than 96% of the television homes in the United States.⁹³ In 2006, cable penetration has

⁸⁹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11, released March 3, 2006, at 6, ¶ 17 (“2006 Video Report”).

⁹⁰ *Id.* at 7, ¶ 17.

⁹¹ <http://www.ncta.com/IssueBrief.aspx?contentId=2688&view=4>.

⁹² 2001 Tribune Comments at 8-9.

⁹³ *Id.*

declined slightly to 66.3% or 65.4 million subscribers. Although cable service is available to 99% of television households,⁹⁴ cable clearly remains the most prominent means by which viewers receive television programming.

In 2001, other multichannel video program distributors (“MVPDs”) were still establishing themselves as viable alternatives to cable delivery of television programming; these services, including direct broadcast satellite (“DBS”) and telephone company video service providers were practically non-existent in 1975.⁹⁵ In 2001, MVPDs other than cable delivered programming to 16.9% of television households; today they deliver programming to 29% of television households.⁹⁶ Moreover, while local-into-local broadcast television service was not a significant feature of DBS service in 2001, by the end of 2005, DBS providers offered local-into-local service in more than 167 of 210 television markets covering more than 96% of the television households in the United States.⁹⁷ More than 86% of the country currently receives its video programming from an MVPD, and there is almost no United States resident without the choice of receiving video service from a cable system or DBS provider.⁹⁸

⁹⁴ National Cable Telecommunications Association (“NCTA”) Industry Overview (June 2006), http://i.ncta.com/ncta_com/PDFs/NCTAAnnual%20Report4-06FINAL.pdf, at 6.

⁹⁵ Tribune 2001 Comments at 9.

⁹⁶ NCTA 2006 Industry Overview, *supra* n.93. While cable systems had seen their total number of subscribers decrease from near 70 million to approximately 65 million a year ago, satellite service providers had seen their subscribership increase from approximately 15 million to just over 26 million subscribers. *See* Tribune 2001 Comments at 9; 2006 Video Report, at 5, ¶¶ 10, 13.

⁹⁷ 2006 Video Report, at 5, ¶ 13.

⁹⁸ *Id.* at 4, ¶ 5 (“We find that almost all consumers have the choice between over-the-air broadcast television, a cable service, and at least two DBS providers.”) & 6, ¶ 17; *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd. 12903, 12953 (1999).

In the past five years, as DBS providers gained customers (including previous cable subscribers), cable operators have upgraded their facilities to provide for digital video and broadband cable service. As of June 2006, cable operators provided digital cable to almost 33 million customers, and passed nearly 118 million homes with digital video and high-speed data capability.⁹⁹ With competition from other broadband MVPD service providers, including telephone companies, consumer demand for programming choices has driven this rapid deployment of digital (and high definition) service. In 2001, cable systems carried more than 230 cable networks; by the end of 2005, the number of satellite-delivered national programming networks had more than doubled to 531.¹⁰⁰ Of these 531 national networks, the majority were not affiliated with any other media entity (broadcast, broadcast network or cable), and only 26% were vertically integrated with a national broadcast network or other broadcast entity:¹⁰¹

Satellite-delivered National Programming Network Affiliation

Unaffiliated (no cable or broadcast affiliation)	274
Cable MSO-integrated	116
Broadcast network/broadcast affiliation	<u>141</u>
Total	531

Radio Stations and Audio Service. In the last five years, the radio industry has been fundamentally altered by the arrival of satellite radio, an entirely new competitor to

⁹⁹ See NCTA Cable Industry Statistics, Broadband Deployment, www.ncta.com.

¹⁰⁰ *2006 Video Report*, at 7, ¶ 21. The increase to 531 networks represented an increase of 143 networks over the total in the 2004 video report. *Id.*

¹⁰¹ *Id.* Additionally, as the Commission has recognized, new firms are entering the wireline MVPD industry. *Id.* at 5, ¶ 14. Most prominently, telephone companies like Verizon and AT&T are building state-of-the-art facilities-based networks that provide video and data services in addition to voice telephony; these broadband service providers serve more than one million customers, and will continue to provide competition in the delivery of video programming. *Id.*

traditional local radio service. In addition, the number of terrestrial radio stations has increased, as have the types of terrestrial audio services and transmission-modes available since 1975, and even since July 2001:

Terrestrial Broadcast Radio Station Totals¹⁰²

	<u>1975</u>	<u>2001</u>	<u>2006</u>
FM Stations	3,353	8,216	8,989
AM Stations	4,432	4,716	4,759
Total Stations	7,785	12,932	13,748

Since July 2001, the Commission also has licensed 712 low power FM stations, providing yet more outlets for local news, views, civic and entertainment programming in communities throughout the nation.¹⁰³ And in the last five years, digital radio technology has permitted radio stations to broadcast multiple audio streams, thereby increasing the number and variety of formats and programs available to the public.

Most significantly, subscriber-based satellite radio has been introduced and rapidly accepted by the public. XM Satellite Radio and Sirius Satellite Radio together offer more than 300 digital channels of audio programming in a seemingly endless variety of formats:

- * news from national and international sources (BBC, C-Span, Bloomberg Business Radio);
- * sports events and talk (NHL, NFL, NBA games and commentary);
- * political and ideological talk (religious, progressive, conservative and expert talk);
- * foreign language programming (music genres, news and information);

¹⁰² See FCC News Release, Broadcast Station Totals As Of March 31, 2006, released May 2006. As noted in the 2001 Tribune Comments, the number of FM radio stations has increased by more than 175% since 1975, when FM radio was just gaining its footing with the listening public. See 2001 Tribune Comments at 8.

¹⁰³ See FCC News Release, Broadcast Station Totals As Of March 31, 2006, released May 2006.

- * special interest and lifestyle channels (books and dramas, family and kids, and old time radio);
- * personality-driven information and entertainment channels (Howard Stern, Opie & Andy, Martha Stewart and Oprah); and
- * genre-specific music formats (for example, classic rock, jazz, blues, electronica, alternative, 1960s hits, The Who 24/7).¹⁰⁴

With these offerings, and more, as of June 30, 2006, Sirius had 4.6 million subscribers nationwide, and in October 2006 announced that it had surpassed 5.1 million subscribers.¹⁰⁵ As of June 30, 2006, XM had 6.89 million subscribers nationwide, and in October 2006 announced that it had achieved 7.185 million subscribers.¹⁰⁶

The availability of satellite radio programming and its rapidly growing number of subscribers contributes to competition and diversity in every market across the nation. While these services were just being rolled out in 2001, Orbitcast confirms that more than 10 million subscribers currently receive service from the satellite radio providers, and citing Jupiter Research, estimates that more than 55 million customers will be subscribing to the services by 2010.¹⁰⁷ Satellite radio clearly is a new and important source of news, information and entertainment programming that has become available across the nation since the release of the Commission's *2003 Order*, further justifying repeal of the Rule.

¹⁰⁴ Sirius delivers more than 130 commercial-free channels, *see* www.sirius.com, and XM delivers more than 170 channels (with a combination of commercial and non-commercial channels, *see* www.xmradio.com.

¹⁰⁵ Sirius Satellite Radio, Inc., Form 10-Q, June 30, 2006, www.shareholder.com/Common/Edgar/908937/950117-06-3434/06-00.pdf, at 5; Sirius Press Release, October 4, 2006, www.investor.sirius.com.

¹⁰⁶ XM Press Release, October 4, 2006, [www.xmradio.com/phx.corporate-ir.net/phoenix.zhtml?c=115922&p=irol-newsArticle&ID=911980&highlight=](http://www.xmradio.com/phx.corporate-ir.net/phoenix.zhtml?c=115922&p=irol-newsArticle&ID=911980&highlight=;); XM Satellite Radio, Inc., Form 10-Q, June 30, 2006, [http://10kwizard.ccbn.com/fil_list.asp?TK=XMSR&CK=001116317&FG=0&alld+ON&BP=http%";](http://10kwizard.ccbn.com/fil_list.asp?TK=XMSR&CK=001116317&FG=0&alld+ON&BP=http%)

¹⁰⁷ "55 Million Satellite Radio Subscribers In 2010," www.orbitcast.com/archives/55-million-satellite-radio-subscribers-in-2010.html, posted November 22, 2005.

The Internet. Much more than satellite radio, as detailed above, the Internet has transformed the manner in which American consumers access news, information and entertainment.¹⁰⁸ Broadband access to the Internet has more than quadrupled since 2002; the number of Americans with residential broadband has increased in four years from 20 million to 84 million.¹⁰⁹ Today, approximately 50 million Americans access news through the Internet on a typical day.¹¹⁰ In July 2001 experts projected that by 2005, consumer time online would increase to 16 hours per month; as of August 2005, time spent online actually had increased to 24 hours per month, and consumers were spending almost twice as much time each week using the Internet (5.9 hours) as reading newspapers (3.4 hours).¹¹¹ As Tribune demonstrated in Section II above, the aggregation of news and information, as well as its distillation and presentation, is no longer dominated by traditional media outlets. Today, through access to the Internet, the provision of news and opinion is a robust, diverse and decentralized marketplace controlled by the consumer.¹¹²

Newspapers. Newspapers are not the dominant news source they were in 1975. In fact, compared with every other medium of mass communications, newspaper readership is the only category to steadily decline in use since 2000. Today's news consumers use the Internet to obtain real-time coverage of news and events that they used to read about in the next day's

¹⁰⁸ See *supra*, at 15-25.

¹⁰⁹ *Id.* at 16-17. The number of adults with broadband access has increased 40% in the past year alone.

¹¹⁰ Pew Internet & American Life Project, Online News, at i (Mar. 22, 2006) ("Online News").

¹¹¹ See 2001 Tribune Comments at 11; Veronis, Suhler & Associates, *Communications Industry Forecast (July 2001)*; eMarketer, Inc., Time Spent with Select Media by Consumers in North America, by Gender, 2005 (in hours per week); Forrester Research (August 2005); ClickZ (August 2005).

¹¹² See *supra*, at 18-25.

newspaper. Competition from electronic and online media has led to newspaper circulation losses. National daily newspaper circulation declined by 8% between 1975 and 2000, and by another 2% between 2000 and 2004.¹¹³ Adult readership likewise has declined between from 55.1% in 2000 to 51.6% in 2005.¹¹⁴ As daily newspaper circulation and readership sinks, weekly newspapers have become a more widely used independent source for news and information about local communities, with circulation increasing steadily from 1996 to 2003.¹¹⁵ The daily newspaper remains a vital and relevant voice; however, the proliferation of alternative voices in the national and local media marketplace has exposed as fallacy any claim that daily newspapers can dominate public discourse or otherwise control the dissemination of news and information to the public.

B. Common Ownership of Newspaper-Television Properties in Tribune's Cross-ownership Markets Has Not Undermined Competition, Reduced Diversity Or Compromised Localism.

In December 2001, Tribune provided abundant factual support from its five cross-ownership markets (New York City, Los Angeles, Chicago, Hartford-New Haven, and South Florida) demonstrating that daily newspaper-television station combinations do not dominate public discourse or control the dissemination of news and information to the public.¹¹⁶

Revisiting these five DMAs five years later confirms that Tribune's continued common

¹¹³ National newspaper circulation was 60,665,000 in 1975, 55,772,000 in 2000, and 54,626,000 in 2004. NAA Industry Statistics, Circulation, www.naa.org.

¹¹⁴ *Id.*

¹¹⁵ NAA Facts About Newspapers, 2004, www.naa.org.

¹¹⁶ *See* 2001 Tribune Comments, at 12-32.

ownership of daily newspapers and television stations has not hindered growth or undermined competition, reduced diversity or compromised localism in the markets.

1. New York City.

The New York DMA, which includes portions of New York, New Jersey, and Connecticut, is the largest television DMA in the United States. It contains nearly 7 million homes. The New York media market is diverse and competitive, with at least 18 independently owned television stations, nearly 150 radio stations, and 30 daily newspapers.¹¹⁷ Most of the nation's major media players own media properties in the market.¹¹⁸ In the New York DMA, Tribune publishes *Newsday* (on Long Island) and owns and operates WPIX, Channel 11, a CW Network affiliate. New York is also home to a newspaper-television duopoly combination comprised of *The New York Post*, WWOR-TV and WNYW(TV).¹¹⁹ In its most recent decision approving the continued common ownership of these media properties, the Commission recognized “the unique diversity” of the New York market.¹²⁰

Television Stations. Today there are 23 broadcast television stations in the New York DMA (an increase from 22 in 2001 and 13 more than the 10 stations operating in the

¹¹⁷ See *K. Rupert Murdoch and Fox Entertainment Group*, FCC 06-122, released October 6 (“*Murdoch/Fox R&O*”), at 3, ¶ 6.

¹¹⁸ All four major networks own television stations in the New York DMA, with FOX and NBC having duopolies. Univision also has a duopoly in New York. Time Warner, Cablevision and Comcast all serve portions of the DMA, which is also home to the publishers of *The New York Times* and *The Wall Street Journal*.

¹¹⁹ In a decision released on October 6, 2006, the Commission approved a transfer of control of Fox Television Stations, Inc., granting Fox a permanent waiver of the Rule to permit continued common ownership of *The New York Post* and WNYW(TV) and a two-year temporary waiver of the Rule to permit continued common ownership of *The New York Post* and WWOR-TV. *Murdoch/Fox R&O*, *supra* n.116, at 1, ¶ 1.

¹²⁰ *Id.* at 4, ¶ 8.

market in 1975). The four major networks (ABC, CBS, Fox and NBC) own and operate 2 duopolies (Fox and NBC) and 2 stand-alone stations (ABC and CBS). Univision owns and operates a third duopoly in the market. Viewed historically, broadcast television ratings are in decline. Considering the emergence of new and different competitors since 1975, the decline in audience share experienced by the longest established television stations (those in existence since 1975) is not surprising.

New York TV Stations With A 1 Share or Greater ¹²¹

Station	Owner	Current Affiliation	1975	2001	2006
WABC, Channel 7	ABC, Inc./Disney	ABC	18	12	11.3
WNBC, Channel 4	NBC Universal	NBC	24	12	8.6
WCBS, Channel 2	CBS Corp.	CBS	22	8	7.2
WNYW, Channel 5	Fox Television Stations	FOX	14	6	5.4
WPIX, Channel 11	Tribune Broadcasting Co.	CW	8	8	4.5
WXTV, Channel 41	Univision Communications	Univision	<1	3	4.1
WNJU, Channel 47	NBC Universal	Telemundo	<1	2	2.8
WWOR, Channel 9	Fox Television Stations	MyNetworkTV	10	6	2.7
WNET, Channel 13	Educational Broadcasting Corp	PBS	3	2	1.5
WFUT, Channel 68	Univision Communications	TeleFutura	NA	<1	1.3
WPXN, Channel 31	Ion	PAX	NA	1	<1

The New York broadcast television market has grown increasingly diverse and competitive since 1975; this trend has continued unabated since Tribune's 2000 acquisition of *Newsday* and Fox's 2001 acquisition (pursuant to a temporary waiver) of a second television station in combination with *The New York Post*. The historical review of the declining audience shares of the broadcast television stations in the New York DMA demonstrates that diversity and competition is robust, and has increased over time:

* In 1975, the top 4 stations together had an audience share of **78**; by 2001, that collective share had declined by more than half to **38**; now, in 2006, the collective share has decreased even further to **32.5**.

¹²¹ All ratings are from the Nielsen Station Index for May of the year reported.

* In 1975, the largest share earned by a television station was **24** (WNBC); by 2001, the largest share was half that share at **12** (both WNBC and WABC); now, in 2006, the largest share earned by a station was even lower at **11.3** (WABC). WNBC has dropped to **8.6** in 2006.

* In 1975, the top 6 rated television stations combined for an audience share of **96**; by 2001, that collective share had declined to **52**; now, in 2006, their collective share has decreased even further to just over **41**.

There is no reason to expect any change in these declining trends, which have been accompanied by an increase in the number of television stations that receive a 1 share or better.¹²²

Reviewing WPIX's audience share in isolation graphically illustrates the lack of competitive power possessed by WPIX as the result of its common ownership with *Newsday*. During the time it has been jointly owned with *Newsday*, WPIX's share actually decreased at a significantly faster rate than its English-language network affiliated competitors (ABC, CBS, Fox, NBC):

Network-WPIX Audience Share Decline Comparison

<u>Station</u>	<u>2001 Share</u>	<u>2006 Share</u>	<u>% Decline</u>
WABC (ABC)	12	11.3	6%
WNBC (NBC)	12	8.6	29%
WCBS (CBS)	8	7.2	10%
WNYW (Fox)	6	5.4	10%
WPIX (CW)	8	4.5	44%

The comparison of audience share decline demonstrates that common-ownership of WPIX and *Newsday* has not harmed competition or diversity in the New York DMA, nor has it vested in WPIX a discernable competitive advantage to garner viewers. As the total number (and

¹²² Ten stations in the New York DMA received a 1 share or better in 2006, compared with only seven such stations in 1975.

historical increase) of media outlets in the market demonstrates, there are many places for WPIX's viewers to go for alternative sources of entertainment and news.

While audience share for the once-dominant stations has generally declined since 1975, the amount of local news programming produced each week has increased. Competition for New York's news viewing audience remains robust, with the current highest-rated evening newscast earning only a 7 (down from 13 in 1975 and 8.2 in 2001).

Hours and Ratings of Local Weekly News

Station	Current Affiliation	Hours/Wk 2001	Hours/Wk 2006	1975 Rg	2001 Rg	2006 Rg
WABC, Channel 7	ABC	27	34	10	7.5	7.0
WNBC, Channel 4	NBC	25.5	31.5	13	8.2	6.4
WNYW, Channel 5	FOX	27	37.5	8	4.2	5.1
WCBS, Channel 2	CBS	32	28.5	11	4.5	4.9
WXTV, Channel 41	Univision	13	17	NA	2.1	2.8
WWOR, Channel 9	MyNetworkTV	7	11	NA	3.9	2.0
WPIX, Channel 11	CW	19.5	27	2	2.9	1.8
WNJU, Channel 47	Telemundo	18	14.5	NA	1.8	1.6
WLNY, Channel 55	IND	NA	5.5	NA	NA	0.4
WPXN, Channel 31	PAX	2.5	NA	NA	0.6	NA
Total Hours		171.5	206.5			

As the table reflects, in 2001, these 10 stations broadcast more than 170 hours of local news; today, these stations broadcast 206.5 hours per week. WPIX's increase in news programming is representative of stations in the market, but particularly noteworthy; in 1975, WPIX broadcast only 5.5 hours of news, while today it produces 27 hours of regularly-scheduled news programming.

MVPD Presence in the DMA. The growth of multi-channel video program distributors impacts each market: not only are these services more widely available and subscribed to than in 1975, but they offer significantly more channels of programming, thereby contributing to both competition and diversity. Currently, almost 81% of television households in New York subscribe to cable, and more than 14% subscribe to DBS or an alternative MVPD service; as the industry has evolved, MVPD penetration in the New York DMA has increased over time from 5% in 1975, to 83% in 2001, to 95% today.¹²³ While available to less than 10% of the population in 1975, the entire population of the New York DMA has access to cable, DBS or telephone company video service today.

Both cable and DBS systems offer subscribers many more programming choices than traditional broadcasters. In 2001, New York cable providers like Time Warner, Comcast and Cablevision offered between 80 and 95 channels; in 2006, these cable providers offer more than 250 channels.¹²⁴ DirecTV and the Dish Network, relatively new MVPDs in 2001, provide more than 300 channels today.¹²⁵

Cable networks increasingly take audience share of viewers from broadcast affiliates. For example:

¹²³ Nielsen Market Data, for July 2006, TVB Research Central, Market Track data, New York DMA, found at www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=134. In July 2001, cable penetration was approximately 76% and DBS and other alternative MVPD penetration was approximately 7%.

¹²⁴ See *id.*; Tribune 2001 Comments at 16; www.timewarner.com.

¹²⁵ Titan TV Program Listings, New York City, zip code 10012.

* In 2006, seven cable networks (Nickelodeon, TNT, Cartoon Network, Disney Channel, ESPN, USA Network, YES Network) ranked among the top 15 channels viewed and another three (Lifetime, MTV, and TBS) made the top 20.¹²⁶

* In 2006, 29 cable networks rank among the top 40 rated video channels in New York, exceeding 11 of the broadcast stations in the New York DMA.¹²⁷

* In 2006, 23 cable channels earned a 1 audience share or greater, and exceeded 13 of the broadcast stations in the New York DMA.

* As with television station ratings, cable channels also have lost audience share, as in 2001, 11 broadcast stations and 33 cable networks each earned a share of 1 or greater, and in 2006, 10 broadcast stations and 23 cable networks each earned a share of 1 or greater.¹²⁸

* In addition to the 19 cable channels with a 1 share or greater, however, 86 other satellite programming channels received a 0.1 share or greater in the New York DMA, including new or strengthened cable networks like SNY, CNN, the FOX News Channel, Spike TV, Court TV, and the Learning Channel.¹²⁹

Newspapers. New York is an exceedingly competitive newspaper market, with *The New York Times*, *New York Post*, *Daily News*, *Newsday*, *The Star-Ledger*, *The Record* and other smaller community daily publications competing for readers. *The New York Times* is the dominant newspaper in New York with a daily circulation of 1,142,464; the circulation of the three other major local daily newspapers analyzed by Tribune in its 2001 Comments (including *Newsday*) today each exceeds 400,000 subscribers:¹³⁰

¹²⁶ The source for ratings is Nielsen LPM Household, for May of the year indicated.

¹²⁷ In addition to the channels discussed above, these cable channels included, among others, the FOX News Channel, Lifetime, the SciFi Network, the Travel Channel, CNN, the Comedy Network, SNY, the Discovery Channel, HGTV, the History Channel, FX and the Family Channel.

¹²⁸ As discussed above, there are many more video program channels available today than were available 5 years ago. *See supra* at 30 (satellite program channels more than doubles between 2002 and 2006).

¹²⁹ In 1975, cable channels were in their infancy, and did not receive such audience shares.

¹³⁰ Audit Bureau of Circulations (“ABC”) Report Data and SRDS Database.

Top 4 Daily Newspapers	1975 Circulation	2001 Circulation	2006 Circulation¹³¹
<i>The New York Times</i>	870,510	1,109,371	1,142,464
<i>Daily News</i>	1,967,116	734,473	708,477
<i>New York Post</i>	583,892	533,860	673,379
<i>Newsday</i> ¹³²	452,012	577,354	427,771

As the Commission recently has recognized, however, there are at least 30 daily newspapers currently serving the New York DMA,¹³³ published by 16 independent publishers.¹³⁴ In addition to the four newspapers and their circulations listed above, the daily newspaper market in the New York DMA also includes:

* *The Star-Ledger* (Newark, NJ), which currently has a daily circulation of approximately 400,000, published by Newhouse Communications.

* At least 7 newspapers published by Gannett Co., Inc., including New Jersey publications in Bridgewater (*Courier News*), Neptune (*Asbury Park Press*) East Brunswick (*Home News Tribune*) and Parsippany (*Daily Record*) and New York publications in Poughkeepsie (*Journal*) and White Plains (*Journal News*). The daily circulations of these publications range from just over 35,000 to just under 150,000.

* At least 5 other daily publications with circulations in excess of 50,000, including the *Connecticut Post* (Bridgeport, CT – 77,943); the *Times Herald Record* (Middletown, NY – 79,913); *Staten Island Advance* (New York City – 61,890); *The Daily Challenge* (Brooklyn - 56,544); and *The Record* (Hackensack – 179,270).

* A Spanish language daily newspaper, *El Diario La Prensa*, with a circulation just over 50,000.

* At least 4 other publications with daily circulations in excess of 40,000, including the *Daily Record* in Morristown, NJ, *The New York Sun* in New York City, *The Express-Times* in Phillipsburg, NJ, and the *Journal Inquirer* in Manchester, CT.

¹³¹ Circulation figures from Tribune 2001 Comments and ABC Report Data, July 2006.

¹³² *Newsday* circulation figures for 2001 and 2006 are unaudited.

¹³³ See *Murdoch/Fox R&O*, *supra* n.116, at 3, ¶ 6.

¹³⁴ The number of independent publishers is reflected in the BIA database.

As the table reveals, the combined daily circulations of the top four newspapers has declined from 3.873 million in 1975 to 2.955 million in 2001 to 2.952 million in 2006. Newspaper circulation trends for these four newspapers show growth from 1975 to 2001; after 2001, *The New York Post* has increased its circulation while *The New York Times* has held steady and *Newsday* and the *Daily News* have seen circulation declines. These composite and individual declines have occurred at the same time that the population of the New York metropolitan area has grown by more than 2.3 million residents.¹³⁵ *Newsday*'s daily circulation has declined during the past five years at a faster rate than the *Daily News*,¹³⁶ notwithstanding its common ownership with WPIX, which commenced in 2000. These results strongly suggest that ownership of a television station in New York does not provide any competitive advantage to the newspaper, and that readers and viewers have many alternative options for obtaining their news and information.

An increasing number of weekly newspapers creates greater competition and contributes to the circulation declines already faced by daily publishers. Today, New Yorkers can choose from hundreds of weekly newspapers, many of which offer hyper-local coverage of particular communities:¹³⁷

* The New York DMA contains approximately 340 weeklies, published by approximately 125 independent publishers.

* Approximately 10 publishers have weekly circulations in excess of 100,000 in the market, including Shore Publishing, All Island Media, Neighborhood Newspapers, Prime Time, The Ruxton Media Group, and Shopper's Guide/Pennysavers.

¹³⁵ U.S. Census Bureau, Census Redistricting Data Summary File (1980 = 18,905,705; 2000 = 21,199,865).

¹³⁶ The circulation of *Newsday* has decreased by 25% at the same time that the circulation of the *Daily News* has decreased by 3.5%.

¹³⁷ Circulation figures from ABC Record Data, July 2006 or BIA database.

* The Ruxton Media Group publishes papers that serve more than 3.3 million readers, All Island Media serves more than 860,000 readers, and Prime Time more than 100,000.

* More than 30 other weekly publications serve in excess of 10,000 readers in their local communities.

* At least 25 other weekly publications serve between 1,000 and 10,000 readers in their local communities.

Viewed together, the growing number of niche weekly newspapers demonstrates that the market for newspapers in New York is extremely competitive, and has remained diverse, despite the presence of two newspaper-broadcast combinations, one of which simultaneously operates a television duopoly and a cable news network.

Radio Stations. The New York DMA contains 223 commercial and non-commercial AM and FM radio stations, owned by at least 116 separate entities, offering a variety of program services and formats as follows.¹³⁸ Of the 223 stations in the DMA, 62 English-language radio stations, operated by 44 different broadcasters, offer varied formats that focus on news, talk, sports, information, education and religion. Sixteen stations, operated by 9 different broadcasters, offer Hispanic or ethnic formats. One hundred and thirty-nine stations, operated by at least 61 different broadcasters, offer a variety of music and entertainment formats, and 3 stations owned by 2 different broadcasters offer a children's format. Finally, as discussed previously, the evolution and growth of satellite radio contribute to the diversity and competition in all media markets across the country, including New York.¹³⁹

¹³⁸ Radio station counts and data have been supplied from the BIA database. In the *Murdoch/Fox R&O*, the Commission acknowledged Fox's showing that at least 150 separate entities operated radio stations in the New York DMA. In the more narrowly-delimited New York City radio market defined by FCC in its *2003 Order*, the BIA database indicates that there are 73 stations with 43 separate owners.

¹³⁹ See *supra*, at 32-33. Both XM and Sirius offer satellite radio programming on a subscription basis to New York residents, each have over 130 channels and a seemingly endless variety of formats between the two services. Both

The Internet. Tribune already has demonstrated the incredible growth of the Internet in these comments, demonstrating that the number of Internet users has quadrupled since 2002.¹⁴⁰ Today, almost 10 million people in the New York DMA access the Internet, and more than two-thirds (66.8%) of those users have a residential broadband connection.¹⁴¹ Websites owned by The New York Times, Yahoo!, Google, and Microsoft currently lead audience measurement metrics across the board, including average reach and number of unique visitors per month. These measurements significantly exceed those of websites from traditional broadcasters, and provide not only national news and information, but aggregated access to local news, sports, and weather as well. A review of the New York Internet leaders in 2001 and today demonstrates the variety of sources available for news, information, opinion and entertainment.

As demonstrated in the 2001 Tribune Comments, the New York market was dominated by sites owned by America Online, Microsoft and Yahoo, each with a website specifically designed for the New York market, with local news pages on New York news and entertainment.¹⁴² AOL reached 86.4% of Internet users, Microsoft reached 72.6% of users, and Yahoo reached 66.9%.¹⁴³ In 2001, the website operated by *The New York Times* reached only 19.4% of Internet users in the market, and was not among the top 50 sites visited most often by

XM and Sirius contribute to the diversity in the market, with national programming, and regional weather and traffic information. As a further illustration of the growing relevance of satellite radio, Howard Stern's relocation to satellite radio was particularly significant in New York, where he formerly was heard locally (for free) on New York station WXRK, from which his program originated. Stern now has drawn millions of listeners to satellite radio.

¹⁴⁰ See *supra*, at 18.

¹⁴¹ Media Metrix, March 2006.

¹⁴² 2001 Tribune Comments at 17.

¹⁴³ See *id.*

New Yorkers.¹⁴⁴ During the same period, *Newsday.com*, the website operated by *Newsday*, was visited less often than 200 other websites in the local market.¹⁴⁵

While many websites produced by traditional media outlets have grown in popularity since 2001, including *New York Times Digital* and websites operated by Tribune, Internet usage in 2006 reflects more vibrant competition in the New York DMA than ever before. For example:

* AOL News, Yahoo!News and MSNBC are still among the five most accessed websites in the market, but more than 55 websites access 1% or more of the market.¹⁴⁶

* AOL News reaches 21.7% of all Internet users, MSNBC.com reaches 17.7 % of all Internet users, and Yahoo! News reaches 17.4% of all Internet users. On a monthly basis, these three sites each reach between 1.7 and 2.2 million unique visitors.

* Today, *New York Times Digital* has the greatest reach in the market, with 31.4% of all Internet users. More than 3 million unique visitors access *New York Times Digital* website, more than any other website in the market.

* The Weather Channel also is accessed by more than 2.1 million people, and has a reach of 22%, the second largest in the New York DMA.

* Tribune (newspaper) reach in the market, as of March 2006, was just over 10%, with just over 1 million unique visitors per month.

* Fifty-two website operators reach more than 100,000 (1% of New York users) users per month in New York, including websites operated by traditional media like the in-market publishers of the *Daily News*, and *The New York Post*; the four major broadcast networks; and out-of-market publications like *USA Today* and the *Washington Post*. Numerous independent and non-traditional websites are included among the 52 websites, including sites operated by CNN (Time Warner), military.com, Netscape, Injersey, Internet Broadcasting, Slate.com, Wunderground.com, Court TV Online, and the BBC, all of which reach more than 2% of Internet users or 200,000 unique visitors.

* A large number of independent Blogs dedicated to the New York City area can be identified using www.technorati.com, including Gothamist (www.gothamist.com), About

¹⁴⁴ *Id.* at 17-18.

¹⁴⁵ *Id.* at 18.

¹⁴⁶ Reach data based upon Media Metrix data for March 2006.

Last Night (www.terryteachout.com), Curbed: New York City Neighborhoods and Real Estate (www.curbed.com); Gawker: New York Media News and Gossip (www.gawker.com); MetroBlogging NYC (www.metblogs.com); Overheard in New York (www.overheardinnewyork.com); and New York Observer Media Mob (www.themediamob.observer.com), to identify just a few.

As the large and diverse number of websites that provide local news and information for New Yorkers reflects, there is no shortage of media outlets in the New York DMA.

2. Los Angeles.

Los Angeles is the second-largest DMA, with more than 5.5 million television homes. The Los Angeles media market is diverse and competitive with 21 independently-owned television stations, 86 independently-owned radio stations and 12 independently-owned publishers of 21 daily newspapers. Like New York, most of the country's major media players own media properties in the market. In Los Angeles, Tribune publishes the *Los Angeles Times* (the "LA Times") and owns and operates KTLA, Channel 5, a CW Network affiliate.

Television Stations. Today, there are 26 broadcast television stations in Los Angeles (an increase from 25 in 2001 and 15 in 1975). These stations are owned by 21 different owners, including the four largest networks. Three of these networks (NBC, FOX, and CBS) own duopolies in the market; Univision owns a fourth duopoly. Like other markets, broadcast television ratings in Los Angeles are generally in decline; this is not surprising considering the emergence of new competitors since 1975. The television stations achieving a 1 audience share or greater in 2006 are listed below:¹⁴⁷

¹⁴⁷ Tribune has not listed ratings for KSCI, Long Beach; KVCR, San Bernadino; KPXN, San Bernadino; KVMD, Twenty-Nine Palms; KXLA, Ranch Palos Verdes; KOCE, Huntington Beach; KAZA, Avalon; KDOC, Anaheim;

Los Angeles TV Stations With A 1 Share or Greater¹⁴⁸

Station	Owner	Affiliation	1975	2001	2006
KABC-TV, Channel 7	ABC, Inc./Disney	ABC	20	11	8.6
KMEX-TV, Channel 34	Univision Communications	Univision	<1	7	7.9
KCBS-TV, Channel 2	CBS Corp.	CBS	21	7	6.1
KNBC, Channel 4	NBC Universal	NBC	22	12	5.9
KTTV, Channel 11	Fox Television Stations	FOX	12	7	5.9
KTLA, Channel 5	Tribune Broadcasting Co.	CW	9	7	3.7
KCAL-TV, Channel 9	CBS Corp.	Independent	7	5	3.4
KCOP, Channel 13	Fox Television Stations	MyNetworkTV	4	5	2.3
KVEA, Channel 52	NBC Universal	Telemundo	<1	3	2.2
KCET, Channel 28	Community TV of Southern Cal	PBS	NA	3	2.1
KFTR, Channel 46	Univision Communications	Telefutura	<1	<1	2.1
KWHY, Channel 22	NBC Universal	Telemundo	<1	1	1.3
KRCA, Channel 62	Liberman Broadcasting	Independent	NA	NA	1.3

The Los Angeles television market has grown increasingly diverse and competitive since 1975, a trend that has continued since 2000, when Tribune acquired the *Los Angeles Times*. A review of the declining audience share of broadcast television stations in Los Angeles demonstrates that diversity and competition is robust and has increased over time:

* In 1975, the top 3 stations (KABC, KCBS-TV, KNBC) together had an audience share of **63**; by 2001, that share declined by more than half to **30**; in 2006, the combined share of the top 3 stations (KABC, KMEX, KCBS) had decreased to **22.6**.

* In 1975, the largest share earned by a television station was **22** (KNBC); by 2001, the largest share was half that at **11** (KABC); in 2006, the largest share earned by a station was even lower at **8.6** (KABC).

* In 1975, **five** stations earned a 9 share or better; by 2001, only **two** stations earned better than a 9 share; in 2006, **no** stations earned as much as a 9 share.

There is no reason to expect any change in these declining trends, which have been accompanied by an increase in the number of television stations that receive a 2 share or better.¹⁴⁹

KJLA, Ventura; KLCS, Los Angeles; KBEH, Oxnard; and KHIZ, Barstow, all of which also operate in the DMA and receive measurable ratings below a 1 audience share.

¹⁴⁸ Audience shares are from the Nielsen Station Index for May of the year listed.

KTLA's ratings history, especially during the period of common ownership with the *LA Times*, shows that common ownership has not increased nor preserved KTLA's market share, and that television broadcasting in Los Angeles has become more diverse and competitive during the past six years.¹⁵⁰ During the time it has been commonly owned with the *LA Times*, KTLA's share has decreased by 48%, the second-highest rate of decline among its English-language network-affiliated competitors (ABC, CBS, Fox, NBC).

Network-KTLA Audience Share Decline Comparison

<u>Station</u>	<u>2001 Share</u>	<u>2006 Share</u>	<u>% Decline</u>
KABC (ABC)	11	8.6	22%
KTTV (Fox)	7	5.9	16%
KCBS (CBS)	7	6.1	13%
KNBC (NBC)	12	5.9	51%
KTLA (CW)	7	3.7	48%

These declines in ratings demonstrate that the common ownership of KTLA and the *LA Times* has not harmed competition or diversity in the Los Angeles DMA, nor has it vested in KTLA a discernable competitive advantage to attract viewers. As the total number (and historical increase) of media outlets in the market demonstrates, there are many places for KTLA's viewers to go for alternative sources of entertainment and news.

While audience share for the once-dominant stations has declined since 1975, and even 2001, the amount of local news programming produced each week has increased.

¹⁴⁹ Eleven stations in the Los Angeles DMA received a 2 share or better in 2006, compared with 10 such stations in 2001 and only seven such stations in 1975.

¹⁵⁰ KTLA earned a 9 share in 1975, and thus has seen its audience share decrease by more than half since the Rule was adopted.

Competition for Los Angeles' news viewing audience remains robust, with the current highest-rated evening newscast arening only a 5.1 rating (down from 10 in 1975 and 7.6 in 2001).

Hours of Local News Per Week and Late Evening News Ratings¹⁵¹

Station	Current Affiliation	Hours/Wk 2001	Hours/Wk 2006	1975 Rat	2001 Rat	2006 Rat
KABC, Channel 7	ABC	34	40	9	7.0	4.8
KNBC, Channel 4	NBC	10	7.6	10	7.6	5.1
KTLA, Channel 5	CW	24.5	32	3	5.3	2.0
KCBS, Channel 2	CBS	28.5	28	9	4.5	5.1
KMEX, Channel 41	Univision	17	17	1	3.5	4.0
KCAL, Channel 9	Independent	31	38.5	2	2.9	2.1
KTTV, Channel 11	FOX	24.5	33	5	4	3.3
KVEA, Channel 52	Telemundo	19.5	17	NA	1.4	NA
KWHY, Channel 22	Telemundo	12.5	9.5	NA	0.8	2.0
KCOP, Channel 13	MyNetworkTV	6	7	1	2.2	0.9

As the table reflects, in 2001, these ten stations broadcast 237 hours of local news; today, these stations broadcast 255 hours per week. KTLA's increase in news programming far exceeds its competitors: in 2001, KTLA broadcast 24.5 hours of news, while today it produces 32 hours of regularly scheduled news programming. Moreover:

* At least nine other television stations (six of which are independently owned) provide at least 17 hours or more per week of news programming.

* Six of nine television stations (five of which are independently owned) exceed 27 hours per week of regularly-scheduled news programming.

* As ratings have declined, the distribution of viewers has become more balanced; in 1975, the top 5 rated newscasts received between a **3 and a 10** (with the top 3 rated newscasts earning 9 or 10 shares); in 2001, the top 5 rated newscasts received between a **3.5 and a 7.6** (with the top 3 rated newscasts earning shares between 5.3 and 7.6); in 2006, the top 5 rated newscasts received between a **3.3 and a 5.4** (with the top 3 rated newscasts earning shares between 4.8 and 5.1).

¹⁵¹ The source for news program hours is Los Angeles Nielsen Galaxy System, May & July 2006; all ratings are from the Nielsen Station Index for May of the year provided.

* In 2006, 8 stations received a 2 or better share; in 2001, 7 stations received a 2 or better share; in 1975, 6 stations received a 2 or better share.

As these facts and trends show, while audience ratings for broadcast television have declined, news in the Los Angeles market is more plentiful and competition more intense than ever.

MVPD Presence in the DMA. Together, cable, DBS, and other MVPDs are able to reach more than 85% of television households in Los Angeles, up from an aggregate of 77% penetration in 2001 and almost none in 1975.¹⁵² Currently, more than 56% of television households in Los Angeles subscribe to cable and more than 28% subscribe to DBS or another alternative MVPD service.¹⁵³ In 2001, Los Angeles cable systems delivered between 75 and 88 channels. These cable systems and other MVPDs now deliver between 250 and 400 channels.¹⁵⁴

As noted previously, cable channels have increasingly taken audience share from broadcasters.¹⁵⁵ For example:

* In 2006, four cable networks (TNT, Nickelodeon, The Disney Channel, and Cartoon Network) ranked among the top 15 channels viewed and another four (ESPN, USA Network, MTV, and Fox News Channel) made the top 20.¹⁵⁶

* In 2006, 26 cable networks rank among the top 40 rated video channels in Los Angeles, exceeding 12 of the broadcast stations in the Los Angeles DMA.¹⁵⁷

¹⁵² See Nielsen Market Data, for July 2006, TVB Research Central, Market Track data, New York DMA, found at www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=112; "L.A. Story for Time Warner Cable," Multichannel News, May 10, 2006. Multichannel News reported that Los Angeles has one of the highest digital subscriber line ("DSL") penetration rates in the nation at 30%, making it clear that competition from telephone companies in the delivery of video programming is at the doorstep. The MVPD penetration figure includes telephone company video subscribers.

¹⁵³ See *id.* In 2001, cable penetration was about 65% and DBS penetration was about 12%. *Id.*

¹⁵⁴ 2001 Tribune Comments at 20; *supra* at 29-30 (discussion of DBS programming); www.timewarner.com.

¹⁵⁵ See *supra* at 39-40 (discussing MVPD programming in New York).

¹⁵⁶ The source for ratings is Nielsen LPM Household, for May of the year indicated.

* In 2006, 19 cable channels earned a 1 audience share or greater, and exceeded 13 of the broadcast stations in the Los Angeles DMA.

* As with television station ratings, cable channels also have lost audience share. In 2001, 28 cable channels earned a 1 audience share or greater in the DMA, nine more than in 2006.¹⁵⁸

* In addition to the 19 cable channels with a 1 share or greater, however, more than 50 other satellite programming channels received greater than a 0.1 rating in the Los Angeles DMA, including new or strengthened cable networks like SpikeTV, Galavision, MTV2, Starz, Oxygen, the Travel Channel, and the NFL Network.

Newspapers. Los Angeles has at least 21 daily newspapers published by at least 12 independent entities, including the *LA Times*, the *Los Angeles Daily News*, the *Orange County Register*, the (Riverside) *Press-Enterprise*, and *La Opinion*. The *LA Times* is, and historically has been, the dominant and most widely circulated daily newspaper in Los Angeles. Like many other markets and despite substantial population growth, however, the combined circulation of daily newspapers in Los Angeles has declined since 1975, and fallen precipitously since 2001.¹⁵⁹

Top Daily Newspapers	1975 Circulation	2001 Circulation	2006 Circulation
<i>Los Angeles Times</i>	1,000,866	1,001,610	851,832
<i>The Orange County Register</i>	195,385	324,056	299,824
<i>Daily News (+ editions)</i>	Not Published Daily	178,156	157,020 (+75,988)
<i>Herald-Examiner</i>	398,421	Not Published	Not Published
<i>The Press-Enterprise</i>	NA	NA	185,053
<i>Star Newspapers</i>	NA	NA	184,289
<i>La Opinion</i>	Not Published	127,576	123,447

¹⁵⁷ In addition to the channels discussed above, these cable channels included HGTV, Comedy Central, the History Channel, CNN, and the Discovery Channel.

¹⁵⁸ As is the case nationwide, the great increase in availability of satellite-delivered programming has resulted in the distribution of viewership among many new alternative channels. See *supra* at 30 (satellite program channels more than doubles between 2002 and 2006).

¹⁵⁹ Audit Bureau of Circulation (“ABC”) Report Data and SRDS Database.

The circulations of these top daily newspapers have fallen, even as the population of Los Angeles has grown by more than 40% between 1980 and 2000.¹⁶⁰ The *LA Times* has seen its daily circulation decline by 15%, more than any other major daily in Los Angeles.

In addition to these top 6 daily newspapers published in the Los Angeles DMA, there are at least 6 other separate and distinct publishers of daily newspapers in the Los Angeles DMA, with at least 15 other daily newspapers with significant circulations there:

- * Gannett publishes the *Palm Springs Desert Sun* with a daily circulation in excess of 130,000.
- * The Copley Press publishes the *Daily Breeze* (Torrance) with a daily circulation of approximately 70,000.
- * The LA Newspaper Group, which publishes the *Daily News*, also publishes dailies in 7 other communities, with circulations between 91,000 (*Long Beach Press Telegram*) and 7,000 (*Redlands Daily Facts*).¹⁶¹
- * The Antelope Valley Press in Palmdale also publishes a daily (*Valley Press*) with a circulation of more than 26,000 and Morris Multimedia in Santa Clarita publishes a daily (the *Signal*) with a circulation of 12,000.

The wide variety and availability of weekly newspapers contribute significantly to competition and diversity in Los Angeles. At least 128 weekly newspapers are currently published and distributed within the Los Angeles DMA:

- * These publications now reach more than 40% of the households in the DMA, or approximately 2,156,000 homes.
- * While the publishers of the major Los Angeles dailies also publish weeklies, other major publishers also have significant weekly publications, including Freedom Communications, Brehm Communications, Community Media, Belo, Century Group Newspapers, Grace Communications, and Wave Newspapers.

¹⁶⁰ 2001 Tribune Comments, at 20. The population grew from 11,497, 548 to 16,376,645.

¹⁶¹ Other LANG papers include the *County Sun* (San Bernardino – 66,826), the *San Gabriel Valley Tribune* (West Covina – 44,049) and the *Star-News* (Pasadena – 30,493).

Radio Stations. The Los Angeles DMA contains 195 commercial and non-commercial AM and FM radio stations, owned by 86 separate entities, offering a variety of program services and formats as follows.¹⁶² Of the 195 stations in the DMA, 40 English-language radio stations, operated by 29 different broadcasters, offer varied formats that focus on news, talk, sports, information, education and religion. Forty-eight stations, operated by 22 different broadcasters, offer Hispanic or ethnic formats. Ninety-nine stations, operated by 48 different broadcasters, offer a variety of music formats, and 2 stations owned by 2 different broadcasters offer a children's format. Finally, in addition to terrestrial radio, as discussed previously, both XM and Sirius offer satellite radio programming on a subscription basis to Los Angeles residents, each with over 130 channels of format and variety.¹⁶³

The Internet. More than 60% of the population in the Los Angeles DMA accesses the Internet, and nearly 75% of those users have a residential broadband connection. As they did in 2001, websites owned by Yahoo!, Google, and Microsoft currently lead audience measurement metrics across the board, including the average reach, number of pages viewed and used, and average usage days per month. These measurements significantly exceed those of websites from traditional broadcasters and newspapers, and provide not only national news and information, but aggregated access to local news, sports, and weather as well. In addition, many new websites are available to the public as sources of national and local news, information and entertainment.

¹⁶² Radio station counts and data have been supplied from the BIA database. In the Los Angeles radio market as defined by FCC in its *2003 Order*, there are 90 stations with 43 separate owners.

¹⁶³ *See supra*, at 32-33.

As demonstrated in the 2001 Tribune Comments, the Los Angeles market was dominated by sites owned by America Online, Microsoft and Yahoo, each with a website specifically designed for the Los Angeles market, with local pages on Los Angeles news and entertainment.¹⁶⁴ AOL reached 84.6% of Internet users, Microsoft reached 74.8% of users, and Yahoo reached 69.2%.¹⁶⁵ In 2001, the website operated by the *LA Times* reached only 15.3% of Los Angeles' online users and was visited less often than 70 other websites.¹⁶⁶

While many websites produced by traditional and other non-traditional media outlets have grown in popularity since 2001, including *latimes.com* and other websites operated by Tribune, Internet usage in 2006 reflects more vibrant competition in the Los Angeles DMA than ever before. For example:

* For March 2006, "Yahoo! News" and "My Yahoo!" had a reach of 27.9% and 26.5% respectively, and msnbc.com had a reach of 18.1%. "Yahoo! Local" also had a reach of 11.5%, while Google Local had a reach of 15% and citysearch.com had a reach of 11.9%.

* These websites operated by Yahoo!, Google and MSNBC thus had a reach exceeding that of *latimes.com*, which had a reach of 10.3%.¹⁶⁷

* While *latimes.com* had an average of 8.6 pages viewed each month and 5.9 average pages used per day, "Yahoo! News" had averages of 73 pages viewed and 6.0 average pages used per day, while msnbc.com had 33 pages viewed and 5.9 average pages used per day.

* While *latimes.com* had 2.3 average usage days per month per visitor, "My Yahoo!," "Yahoo! News," msnbc.com, and Google News/Google Local had averages of 9.7, 5.5, 4.1, and 5.1, respectively.

¹⁶⁴ 2001 Tribune Comments at 21.

¹⁶⁵ *See id.*

¹⁶⁶ *Id.*

¹⁶⁷ In fact, March 2006 was the first time that *latimes.com*'s reach exceeded 10%. On the other hand, from March 2005 to March 2006, the five dominant websites ("Yahoo News," "My Yahoo!," and "Yahoo! Local," msnbc.com and "Google Local") each more than doubled *latimes.com*'s average reach, as did msnbc.com and "Google Local."

* As in New York, hundreds of local websites address news and information in Los Angeles, including more than 50 local Los Angeles blogs, proving that there is no shortage of outlets from which the public can obtain news, views and information in Los Angeles.¹⁶⁸

3. Chicago.

Chicago is the third-largest DMA in the country, with more than 3.35 million television homes. The Chicago media market is diverse and competitive, with 14 independently-owned television stations, 97 independently-owned commercial and non-commercial radio stations and 24 daily newspapers published by 13 different publishers. As with New York and Los Angeles, most of the country's major media players own media properties in the market. In Chicago, Tribune publishes the *Chicago Tribune*, and owns and operates WGN-TV, Channel 9,

¹⁶⁸ See Richard Rushfield, Jason Oberfest, www.lablogs.com. See, e.g., LA Observed, <http://www.laobserved.com>; Ron Fineman's On the Record, <http://www.ronfineman.com>; The Huffington Post, <http://www.huffingtonpost.com>; Defamer, the L.A. Gossip Rag, <http://www.defamer.com>; FishBowlLA, <http://www.mediabistro.com/fishbowl>; Insider's Guide to Los Angeles, <http://www.la.com/blog/weblog.php>; LAist, <http://www.laist.com>; Metroblogging Los Angeles, <http://blogging.la>; Keeping Los Angeles Fun, <http://www.losanjealous.com>; Los Angeles Speaks Here, <http://lavoices.org>; The Hollywood Liberal, www.thehollywoodliberal.com; Patterico's Pontifications, <http://patterico.com>; Starked LA, www.starked.com; Rough & Tumble, www.rumble.com; The Roundup, <http://www.capitolbasement.com>; Capitol Weekly, <http://www.capitolweekly.net>; California Insider, <http://www.sacbee.com/static/weblogs/insider/>; The California Observer, <http://caobserver.blogspot.com/>; Joe Scott, <http://www.joescott3.com/>; Pineda Consulting, <http://www.pinedaconsulting.com/>; Greg Dewar.com, <http://gregdewar.com/>; Dodger Thoughts, <http://dodgerthoughts.baseballtoaster.com>; Hollywood, Interrupted Premium, www.hollywoodinterrupted.com; TrojanWire, www.trojanwire.com; Tony Pierce.com + busblog, www.tonypierce.com/blog/blogg.htm; Michael Williams—Master of None, www.mwilliams.info; Art.blogging.la, <http://art.blogging.la>; Franklin Avenue, <http://franklinavenue.blogspot.com>; Green LA girl, <http://greenlagirl.com>; SoCal Law Blog Standard Ad, www.socalawblog.com; Mayor Sam's Sister City, <http://mayorsam.blogspot.com>; Life in Downtown Los Angeles, <http://blogdowntown.com>; Lakers Blog, <http://lakersblog.latimes.com>; Curbed LA, <http://la.curbed.com>; Gridskipper-Los Angeles, <http://www.gridskipper.com/travel/los-angeles/index.php>; Cityfeeds.com-Los Angeles, <http://losangeles.cityfeeds.com/>; Movie City News, <http://www.moviecitynews.com/index.html>; Hollywood Elsewhere, <http://www.hollywood-elsewhere.com/>; The Aesthetic, <http://www.theaesthetic.com/>; The LALA Times, <http://www.lalalates.com/>; Los Angeles Independent Media Center, <http://la.indymedia.org/>; Desire LA, <http://desirelosangeles.com/>; City Watch LA, <http://www.citywatchla.com/index.html>; Civil Action Press, <http://civilactionpress.blogspot.com/>; Moore for Mayor, <http://waltermoore.blogspot.com/>; Antonio Watch, <http://www.antoniowatch.com/home/>; LA City, <http://lacityorgcd11.blogspot.com/>; Eric Garcetti blog, <http://www.cd13.com/>; Janice Hahn blog, <http://janicehahn.org/>; LA Animal Services, <http://laanimalservices.blogspot.com/>; LA Fire Department blog, http://lafdblog.typepad.com/lapd_blog/; LA Brain Terrain, <http://www.labrainterrain.com/>; LA Stories, <http://lastories.com/index.html>.

an affiliate of The CW Network, WGN(AM) radio, and ChicagoLand Television News, a 24-hour cable news channel.

Television Stations. There are 16 broadcast television stations in Chicago, the same as were in the market in 2001 (but an increase of 6 above the 10 available in 1975). Fourteen of these stations are independently owned and operated. The four major networks own stations in Chicago, and Fox and NBC each own duopolies. Like other markets, broadcast television ratings in Chicago are generally in decline; this is not surprising considering the emergence of new and different media outlets since 1975, and even 2001.

Chicago TV Stations With A 1 Share or Greater¹⁶⁹

Station	Owner	Affiliation	1975	2001	2006
WLS-TV, Channel 7	ABC/Walt Disney	ABC	22	15	13.3
WMAQ-TV, Channel 5	NBC Universal	NBC	26	11	7
WCPX, Channel 38	ION	PAX	NA	2	<1
WSNS, Channel 44	NBC Universal	Telemundo	3	2	1.3
WGN-TV, Channel 9	Tribune	CW	17	9	6.4
WBBM-TV, Channel 2	CBS	CBS	24	7	6.8
WFLD, Channel 32	Fox Television Stations	FOX	5	8	6.3
WPWR, Channel 50	Fox Television Stations	MyNetworkTV	<1	5	2.1
WTTW, Channel 11	Window To The World	PBS	3	4	2.7
WCIU-TV, Channel 26	Weigel Broadcasting	Independent	<1	4	4
WGBO, Channel 66	Univision	Univision	NA	4	3.2
WYCC, Channel 20	City Colleges of Chicago	PBS	<1	1	<1

The Chicago television market has grown increasingly diverse and competitive since 1975, notwithstanding Tribune's common ownership of the *Chicago Tribune*, WGN(AM), and WGN-TV. A review of the declining audience share for broadcast television stations in Chicago demonstrates that diversity and competition are robust, increasing over time:

¹⁶⁹ Audience shares are all-day ratings from the Nielsen Station Index for May of the year listed.

* In 1975, the top 4 stations (WMAQ-TV, WBBM-TV, WLS-TV, and WGN-TV) together had an audience share of **89**; by 2001, that share had declined by more than half to **42**; in 2006, the collective share had declined to **33.5**.

* In 1975, the largest share earned by a television station was **26** (WMAQ-TV); by 2001, the largest share was **15** (WLS-TV); in 2006, the largest share earned by a station was even lower at **13.3** (WLS-TV).

Audience ratings also demonstrate that since 1975, the once-dominant stations have become less dominant (earning declining shares), while other (usually newer) stations have earned a greater share over time. In fact, fewer stations are earning shares at 10 or above, and more stations are earning shares at 4 or more. In 2006, one station attracted more than a 10 share, compared to two stations in 2001 and four stations in 1975. Conversely, while only seven stations had a 2 share or greater in 1975, eleven stations did so in 2001, and nine stations did so in 2006, despite the growth of cable network programming and share. Tribune's common ownership of media properties has not hindered the growth of diversity and competition in Chicago, where a large number of alternative outlets are available. Further, Tribune's common ownership of media properties in Chicago has not prevented WGN-TV's share from falling nor has it otherwise provided a competitive advantage. Despite being the fourth-ranked station in Chicago in 2006 (or fifth, depending upon the measure), WGN-TV currently has a share of 6.4, down from 9 in 2001, and less than half its share of 17 in 1975.

While audience share for the once-dominant stations has declined steadily since 1975, the amount of local news programming produced in the market each week has increased. Competition for Chicago news-viewing audience remains robust, with the current highest-rated evening newscast earning only a 9.9 rating (down from 20 in 1975 and 14.2 in 2001).

Hours and Household Ratings of Local News Per Week

Station	Current Affiliation	Hours/Wk 2001	Hours/Wk 2006	1975 Rat	2001 Rat	2006 Rat
WLS-TV, Channel 7	ABC	30	31.5	20	14.2	9.9
WMAQ, Channel 5	NBC	29.5	30	16	10.5	7.0
WSNS, Channel 44	Telemundo	5	NA	NA	0.6	NA
WCPX, Channel 38	PAX	2.5	NA	NA	1.1	NA
WGN-TV, Channel 9	WB/CW	27	31.5	9	6.3	4.6
WBBM, Channel 2	CBS	23.5	24.5	14	4.7	5.3
WFLD, Channel 32	FOX	33	33	NA	4.3	4.7
WGBO, Channel 66	Univision	7	NA	NA	2.1	NA
WTTW, Channel 11	PBS	2.5	20	NA	1.3	NA
Total Hours		160	170.5			

As reflected in the table, these nine stations together broadcast approximately 170.5 hours of local news programming each week, an increase over the 160 hours per week in 2001. While three stations have ceased broadcasting an evening newscast since 2001, amounting to a loss of less than 15 hours of news programming, the remaining 6 stations (including one station commonly owned with a station that terminated its newscast) have increased their news programming by 25 hours per week. The facts and trends evident from the table show that while audience ratings for broadcast television have declined, the delivery of news in the Chicago market is more plentiful and competition is more intense than ever.

MVPD Presence in the DMA. In 2006, cable penetration in Chicago is 67%, and DBS reaches approximately 17%, for a total MVPD penetration of approximately 84% of the market.¹⁷⁰ Five years ago, the total MVPD penetration was approximately 73%, with cable accounting for 65% of the Chicago market and DBS about 8%. In 2001, Chicago cable systems

¹⁷⁰ See Nielsen Market Data, for July 2006, TVB Research Central, Market Track data, New York DMA, found at www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=38.

(overwhelmingly owned and operated by Comcast) delivered approximately 80 channels, and these cable systems and other MVPDs now deliver between 250 and 400 channels.¹⁷¹

As noted previously, cable channels have increasingly taken audience share from broadcasters.¹⁷² For example, in Chicago:

* Six cable channels earn a share of 2 or greater, including the Disney Channel (3.3) and TNT (3.3), Nickelodeon (2.8), USA Network (2.7), ESPN (2.0)and TBS (2.0). These six channels have shares that exceed seven broadcast television stations in Chicago.

* Twenty-four cable networks currently earn at least a 1 share of the household audience in Chicago, compared to 28 cable channels in 2001. These other satellite-delivered channels include Fox News Channel, Comcast SportsNet Chicago, Lifetime, Cartoon Network, MTV, BET, Comedy Central, Discovery Channel, FX, the History Channel, and SpikeTV.¹⁷³

Newspapers. The Chicago newspaper market also features intense competition, including its two large-circulation dailies and several successful suburban daily newspapers. The *Chicago Tribune* has the largest circulation. Like many other markets and despite substantial population growth, the combined circulation of daily newspapers in Chicago has declined since 1975, and has fallen precipitously again since 2001.¹⁷⁴

¹⁷¹ 2001 Tribune Comments at 24; *supra* at 29-30 (discussion of DBS programming); www.comcast.com.

¹⁷² See *supra* at 39-40 (discussing MVPD programming in New York).

¹⁷³ As is the case nationwide, the great increase in availability of satellite-delivered programming has resulted in the spread of viewership to many new alternative channels. See *supra* at 30 (satellite program channels more than doubles between 2002 and 2006).

¹⁷⁴ Audit Bureau of Circulations (“ABC”) Report Data and SRDS Database.

Top Daily Newspapers	1975 Circulation	2001 Circulation	2006 Circulation
<i>Chicago Tribune</i>	806,083	675,847	579,079
<i>Chicago Sun-Times</i>	567,780	480,920	382,796
<i>Chicago Daily News</i>	425,220	Not published	Not published
<i>Arlington Heights/Daily Herald</i>	11,717	148,375	151,112
Combined Circulation	1,810,800	1,305,142	1,112,987

Combined daily circulation at the top two newspapers is down 16.8% since 2001 and 30% since 1975. The *Chicago Daily News*, a significant daily in 1975, is no longer published.

Notwithstanding their respective circulation declines, competition between the *Tribune* and the *Sun-Times* remains fierce. Moreover, in addition to these three dailies, 21 other daily newspapers are published, with at least 10 additional publishers represented in the market. These newspapers include:

* The *Daily Herald*, with a circulation just over 185,000, the *Times*, with a circulation just over 83,000, and the *Post-Tribune*, with a circulation over 64,000.

* Ten newspapers with circulations between 10,000 and 50,000, including the *Joliet Herald-News* (42,663), the *Daily Southtown* (41,114), the *Northwest Herald* (37,636), *The Star* (37,267), the *Aurora Beacon-News* (27,167), the *Naperville Sun* (17,596), the *Kane County Chronicle* (13,493), and the *Elgin Courier-News* (13,143).

* In addition to Tribune and Hollinger (Sun-Times Media Group), publishers in the Chicago DMA include Shaw Newspapers (*Northwest Herald* and *Kane County Chronicle*), Lee Enterprises (*The Times*), Paxton Media Group (*The News-Dispatch*), Pulitzer Newspapers (*The Daily Chronicle*), and The Small Newspaper Group (*Daily Journal* and *The Daily Times*).

In addition, Chicago's newspaper market has become increasingly diverse and competitive with the advent of hundreds of weekly newspapers, many of which have begun publication since 1975. At least 187 weekly newspapers are currently distributed in Chicago, published by 51 different owners. The leader in the weekly newspaper arena is Pioneer Press, a subsidiary of Hollinger/Sun-Times Media Group, the publisher of the *Chicago Sun-Times*.

Pioneer publishes more than 40 separate weekly papers in communities around Chicago, with a combined weekly circulation of approximately 185,000. Other weekly publishers and weekly newspapers include:

* Approximately 20 weeklies published in Chicago, including the *Beverly Review* (6,300), *Chicago's Northwest Side Press* (45,000), the *Near North News* (7,080), the *News Star* (6,000), the *Reporter* (12,000), and the *Southwest News Herald* (54,000).

* Weeklies published by Community Media Group (*Remington Press*, *Kankakee Valley Post-News*, and the *Newton County Enterprise*), Examiner Publications (*The Bartlett Examiner* and *The Hanover Park Examiner*), GateHouse Media (*Naperville Reporter*, *Lemont Reporter*, *Romeoville Metropolitan*, *Glendale Heights Press* and 14 other weeklies), Liberty Suburban (*The Downers Grove Reporter*, *Elmhurst Press*, the *Batavia Republican* and 13 other weeklies), Pulitzer Newspapers (*The MidWeek*), Southwest Messenger Press (*Evergreen Park Courier*, *Bridgeview Independent* and 9 other weeklies), and Sun Publications (*The Plainfield Sun* and 8 other weeklies).

* Alternative weeklies like *The Chicago Reader* and *New City*.

More than 25 of these weekly newspapers are circulated to 10,000 or more readers, and 110 of these weekly publications are circulated to between 1,000 and 10,000 readers. Clearly, weekly publications have become significant sources of news and information in Chicago.

Radio Stations. The Chicago DMA contains 166 commercial and non-commercial AM and FM radio stations, owned and operated by 97 separate entities.¹⁷⁵ Of the 166 stations in the DMA, 46 English-language radio stations, operated by 34 different broadcasters, offer varied formats that focus on news, talk, sports, information, education and religion. Fourteen stations, operated by 7 different broadcasters, offer Hispanic or ethnic formats. More than 100 stations, operated by 55 different broadcasters, offer a variety of music formats, and one station offers a children's format. Finally, in addition to terrestrial radio, as

¹⁷⁵ In the more limited radio geographic market as defined by the rules adopted in the 2003 Order, there are 133 radio stations owned by 75 different owners.

discussed previously, both XM and Sirius offer satellite radio programming on a subscription basis to Chicago residents, each with over 130 channels of format and variety.¹⁷⁶

The Internet. Tribune already has demonstrated the incredible growth of the Internet in these comments, demonstrating that the number of Internet users has quadrupled since 2002.¹⁷⁷ Today, more than 3.2 million people in the Chicago DMA currently access the Internet, and more than 64% of those users have a residential broadband connection.¹⁷⁸ Websites owned by Yahoo!, Google, and Microsoft currently lead audience measurement metrics across the board, including average reach and number of unique visitors per month. These measurements significantly exceed those of websites from traditional broadcasters, and provide not only national news and information, but aggregated access to local news, sports, and weather as well. Comparing the Chicago Internet leaders in 2001 and today demonstrates the variety of sources available for news, information, opinion and entertainment.

The Chicago market has been dominated by sites owned by America Online, Microsoft and Yahoo, each with content, including news, weather and other information specifically designed for Chicagoans.¹⁷⁹ In 2001, AOL reached 78.8% of Internet users, Microsoft reached 72.8% of users, and Yahoo reached 65.7%.¹⁸⁰ As broadband has become more prevalent, more websites and portals have obtained significant usage in the market.

¹⁷⁶ See *supra*, at 32-33.

¹⁷⁷ See *supra*, at 18.

¹⁷⁸ Media Metrix, March 2006.

¹⁷⁹ 2001 Tribune Comments at 25.

¹⁸⁰ See *id.*

While many websites produced by traditional media outlets have grown in popularity since 2001, including websites operated by Tribune, Internet usage in 2006 reflects more vibrant competition in the Chicago DMA than ever before. For example:

* AOL News, Yahoo!News and MSNBC are still among the seven most accessed websites in the market, but approximately 50 websites reach 1% or more of the market.¹⁸¹

* AOL News reaches 13.9% of Internet users, MSNBC.com reaches 14.6% of all Internet users, and Yahoo! News reaches 26.9% of all Internet users. On a monthly basis, these three sites each reach between 606,000 and 1.175 million unique visitors.

* Today, *New York Times Digital* has the greatest reach in the market, with 27.6% of all Internet users. More than 1.2 million unique visitors access *New York Times Digital*'s website, more than any other website in the market.

* Tribune's reach in the market, as of March 2006, was just over 18.3%, with approximately 800,000 unique visitors per month.

* Twenty-seven website operators reach more than 100,000 users per month in Chicago, including websites operated by traditional media like the in-market publishers of the *Chicago Sun Times* and *Chicago Tribune*; the four major broadcast networks; and out-of-market publications like the *New York Times* and *The Washington Post*. Numerous independent and non-traditional websites are included among the 29 websites, including sites operated by Internet Broadcasting Systems, Slate.com and wunderground.com, all of which reach more than 2% of Internet users or 88,000 unique visitors.

* A large number of independent Blogs dedicated to the Chicago area can be identified using www.technorati.com and other websites, including Chicago Bloggers (www.chicagobloggers.com), Hyde Park Assets (<http://hydeparkcrime.blogspot.com>), Blogging Mayor of Round Lake (www.eroundliake.com/blog), Windy City Webloggers (<http://chicago.creativecanvas.com>), Metroblogging Chicago (<http://netblos.co>), Chicago Blogs (www.ringsurf.com/netring?ring=chicagoblogs), Chicagoray (<http://chicagoray.blogspot.com>), Blog-A-Bull (www.blogabul.com), Chicagoist (www.chicagoist.com), Gaper's Block (www.gapersblock.com), Hot Type (www.chicagoreader.com/features/stories/hottype.com), Chicago Life (<http://chicagolife.blogspot.com>), and Eat Chicago (www.eatchicago.net) to identify just a few.

¹⁸¹ Reach data based upon Media Metrix data for March 2006.

As the large and diverse number of websites that provide local news and information for Chicagoans reflects, there is no shortage of media outlets in the Chicago DMA.

4. South Florida.

Miami-Ft. Lauderdale is the 17th largest DMA (the “Miami DMA”), and West Palm Beach-Ft. Pierce (the “WPB DMA”), immediately to the north, is the 38th largest DMA. Together, they form the South Florida market with more than 2.27 million television homes (1.52 million and 752,000, respectively).¹⁸² The Miami DMA is extremely diverse and competitive, with at least 11 independently-owned television stations, 42 independently-owned commercial and non-commercial radio stations, and 5 daily newspapers published by four different owners. The WPB DMA contains an additional 10 independently-owned television stations and at least 2 daily newspapers that provide service to portions of the Miami DMA. As with New York, Los Angeles and Chicago, most of the nation’s major media companies serve the market. In South Florida, Tribune publishes the *Sun-Sentinel*, and owns and operates Station WSFL-TV (formerly WBZL), Channel 39, a CW Network affiliate.¹⁸³

Television Stations. Today, there are 19 broadcast television stations in the Miami DMA, and 10 stations in the WPB DMA, for a total of 29 stations in the South Florida market (an increase from the total of 25 stations in 2001 and the 10 stations in 1975).¹⁸⁴ These

¹⁸² While the Miami DMA and the WPB DMA are separate DMAs, in various traditional media markets, the public in a significant portion of both DMAs has the choice between sources from either market. During the course of the analysis of the South Florida market, Tribune therefore will cover media in both DMAs.

¹⁸³ Tribune currently owns both properties pursuant to a temporary waiver of the Rule pending completion of this rulemaking proceeding.

¹⁸⁴ In 1975, the Miami DMA had 8 television stations and the WPB DMA had 2 stations, while in 2001 the Miami DMA had 15 stations and the WPB DMA had 10 stations. See Tribune 2001 Comments at 26.

stations are owned by 23 distinct owners, with 11 separate entities in the Miami DMA alone. Two of the four major networks (CBS and NBC) own duopolies in the Miami DMA, as does Univision. Like other markets, broadcast television ratings in the South Florida market are generally in decline; this is not surprising considering the emergence of so many new and different media sources since 1975.

Miami DMA TV Stations With A 1 Share or Greater¹⁸⁵

Station	Owner	Affiliation	1975	2001	2006
WLTV, Channel 23	Univision	Univision	2	11	8.6
WSVN, Channel 7	Sunbeam Television Corp.	FOX	31	8	7.4
WPLG, Channel 10	Post-Newsweek	ABC	21	10	7.2
WFOR, Channel 4	CBS	CBS	35	9	7
WSCV, Channel 51	NBC Universal	Telemundo	<1	7	6.7
WTVJ, Channel 6	NBC Universal	NBC	9	9	5.8
WSFL, Channel 39	Tribune	CW	NA	5	3.7
WBFS, Channel 33	CBS	MyNetworkTV	NA	6	3.2
WAMI, Channel 69	Univision	Telefutura	NA	2	2.5
WPXM, Channel 35	Ion	PAX	NA	1	1.5
WLRN, Channel 17	Dade County Public Schools	PBS	<1	1	1.3
WPBT, Channel 2	Community TV Foundation	PBS	2	2	1.2
WHFT, Channel 45	Trinity Broadcasting	TBN	<1	1	<1

The South Florida television market has grown increasingly diverse and competitive since 1975, a trend that has continued since Tribune's 1997 acquisition of WSFL-TV. A review of the declining audience shares of broadcast television stations demonstrates that diversity and competition are robust, and have increased steadily over time:

* In 1975, the top 3 stations (WFOR, WSVN and WPLG) together had an audience share of **87**; by 2001, the share of the top 3 (WLTV, WPLG and WFOR) had declined to almost one-third, or **30**; in 2006, the top 3 (WLTV, WSVN and WPLG) had declined even further to **23.2**.

¹⁸⁵ Audience shares are all-day ratings from the Nielsen Station Index for May of the year listed.

* In 1975, the largest share earned by a television station was **35** (WFOR); by 2001, the largest share had decreased to less than one-third, or **11** (WLTV); in 2006, the largest share for a station was even lower at **8.6** (WLTV).

* Since 2001 English-language stations' shares have dropped, and while four stations earned greater than a 9 share in 2001, no station now earns greater than an 8.6 share.

* While ratings for English-language stations have decreased almost across the board, currently at least a dozen stations earn a 1 share or greater; this is twice the number of stations with a 1 share in 1975.

There is no reason to expect any change in these declining trends in the ratings of the highest rated English language stations in the Miami DMA, despite the fact that they have been accompanied by an increase in the number of television stations that receive a 1 share or better.

While audience share for the once-dominant stations has declined steadily since 1975, the amount of local news programming produced each week by television stations in the Miami DMA has increased. In addition, competition for news viewers remains robust, with many choices available.¹⁸⁶

Hours and Ratings of Local News

Station	Affiliation	Hours/Wk 2001	Hours/Wk 2006	1975 Rat	2001 Rat	2006 Rat
WLTV, Channel 23	Univision	12	12	NA	5.9	6.3
WPLG, Channel 10	ABC	24	28	11	6.3	5.7
WSCV, Channel 51	Telemundo	14.5	14.5	NA	4.8	5.5
WSVN, Channel 7	FOX	42	53.5	16	6	5.4
WPXM, Channel 35	PAX	2.5	NA	NA	0.5	NA
WFOR, Channel 4	CBS	24.5	26.5	11	7.1	4.8
WTVJ, Channel 6	NBC	30	30	3	7.3	4.2
WJAN, Channel 41	Indep.	NA	NA	NA	NA	2.6
WBFS, Channel 33	MyNetTV	3.5	4.0	NA	2.9	2.0
WSFL, Channel 39	CW	3.5	3.5	NA	2.2	1.7
WAMI, Channel 69	Telefutura	NA	NA	NA	NA	1.1
Total Hours		156.5	172			

¹⁸⁶ Audience shares are all-day ratings from the Nielsen Station Index for May of the year listed.

Together, Miami DMA broadcast television stations produce at least 172 hours of local news programming each week, an increase over the 156.5 hours per week broadcast five years ago. Moreover, the steady spread of ratings through the various newscasts also demonstrates the growing diversity of sources in the market:

* Today, the highest rated newscast earns only a **6.3** share, a figure matched or exceeded by three stations in 2001; in 1975, three stations' newscasts matched or exceeded **11**.

* Today, **ten** stations' newscasts exceed a 1 share or greater; in 2001 only **eight** stations did so, and in 1975 there were only **four** stations that had newscasts.

The facts and trends evident from the table show that while audience ratings for broadcast television have declined, the delivery of news in the Miami DMA is more plentiful and competition is more intense than ever.

MVPD Presence in the DMA. Together, cable, DBS and other MVPDs have achieved a 90% penetration rate in the Miami DMA, up from 84% in 2001. Currently, more than 67% of television households in the Miami DMA subscribe to cable, and almost 24% subscribe to DBS or another MVPD service; in 2001, approximately 75% of television households subscribed to cable, but only 9% subscribed to DBS.¹⁸⁷ In 2001, cable providers delivered approximately 75 channels to subscribers; today, cable and other MVPDs deliver between 250 and 400 channels.¹⁸⁸

¹⁸⁷ See Nielsen Market Data, for July 2006, TVB Research Central, Market Track data, New York DMA, found at www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=38.

¹⁸⁸ 2001 Tribune Comments at 28; *supra* at 29-30 (discussion of DBS programming); www.comcast.com.

As discussed previously, cable networks increasingly take audience share of viewers from broadcast affiliates.¹⁸⁹ For example:

* In 2006, six cable networks (TNT, Disney Channel, Nickelodeon, ESPN, FOX News Channel, and the Cartoon Network) ranked among the top 15 channels viewed and another four (USA, BET, TBS and Lifetime) made the top 20.¹⁹⁰

* In 2006, 10 cable networks rank among the top 20 rated video channels in the Miami DMA, exceeding nine of the broadcast stations in the Miami DMA.

* In 2006, 17 cable channels earned a 1 audience share or greater, and exceeded 7 of the broadcast stations in the Miami DMA.¹⁹¹

* As with television station ratings, cable channels also have lost audience share, as in 2001, 13 broadcast stations and 28 cable networks each earned a share of one or greater, and in 2006, 12 broadcast stations and 17 cable networks each earned a share of one or greater.¹⁹²

* In addition to the 17 cable channels with a 1 share or greater, however, more than 50 other satellite programming channels received greater than a 0.1 rating in the Miami DMA, including new or strengthened cable networks like the Family Channel, the History Channel, Spike TV, HGTV, Fox South Florida, MSNBC, Bravo, the Learning Channel, and Oxygen.¹⁹³

Newspapers. The Miami DMA had three independently published daily newspapers in 1975, but only the *Miami Herald* and Tribune's *Sun-Sentinel* still are published.

Top Daily Newspapers	1975 Circulation	2001 Circulation	2006 Circulation
<i>Miami Herald</i>	375,745	300,377	312,109
South Florida <i>Sun-Sentinel</i>	96,616	236,095	260,316
<i>Miami News</i>	77,568	Not published	Not published

¹⁸⁹ See *supra* at 39-40 (discussing MVPD programming in New York).

¹⁹⁰ The source for ratings is Nielsen LPM Household, for May of the year indicated.

¹⁹¹ In addition to the channels discussed above, these cable channels included CNN, MTV, and FX.

¹⁹² As discussed above, there are many more video program channels available today than were available 5 years ago. See *supra* at 30 (satellite program channels more than doubles between 2002 and 2006).

¹⁹³ In 1975, cable channels were in their infancy, and did not receive such audience shares.

Today, Cooke Communications publishes the *Key West Citizen* (published for 125 years, Key West, Key Largo and Marathon), and Forum Communications (Suburban Press) publishes the *Tamarac/North Lauderdale Forum*. In the WPB DMA, Cox Communications publishes *The Palm Beach Daily News* and, the *Daily News*, along with *The Palm Beach Post*, achieve circulation in the Miami DMA. The *Sun-Sentinel* and the *Miami Herald*, along with the two WPM DMA daily newspapers serve the South Florida market.

In addition to the daily newspapers, South Florida is home to a robust market of weekly newspaper competitors. BIA has identified 22 weekly newspaper published by 16 owners in the Miami DMA. These weekly papers serve a diverse array of communities and special interests throughout the South Florida market. Among these weekly publications are:

- * Independent weeklies, including the *Sunrise Forum* (Media General); *South Dade News Leader* (Calkins Media Group); *Coral Gables News* and *Palmetto Bay Tribune* (Miller Publishing); and *Miami Today* (Michael Lewis).
- * Weeklies published by McClatchy Newspapers in addition to the *Miami Herald*, and by Tribune affiliates in addition to the *Sun-Sentinel*.
- * Weeklies published by the two other daily newspaper publishers in the Miami DMA, including the *Marathon Free Press* (Cooke Communications) and *West Boca Times* (Forum Communications).

Radio Stations. The Miami DMA contains 77 commercial and non-commercial AM and FM radio stations, owned and operated by 42 separate entities.¹⁹⁴ These stations offer a variety of formats. Of the 77 stations in the DMA, 20 English-language radio stations, operated by 17 different broadcasters, offer varied formats that focus on news, talk, sports, information,

¹⁹⁴ In the more limited radio geographic market as defined by the rules adopted in the 2003 Order, there are 56 radio stations owned by 32 different owners.

education and religion. Eighteen stations, operated by 10 different broadcasters, offer Hispanic or ethnic formats. Forty-five stations, operated by 14 different broadcasters, offer a variety of music formats, and 1 station offers a children's format. Finally, in addition to terrestrial radio, as discussed previously, both XM and Sirius offer satellite radio programming on a subscription basis to Miami residents, each with over 130 channels of format and variety.¹⁹⁵

The Internet. Today, more than 700,000 people in the Miami DMA currently access the Internet, and more than 64% of those users have a residential broadband connection.¹⁹⁶ Websites owned by Yahoo!, Google, and Microsoft currently lead audience measurement metrics across the board, including average reach and number of unique visitors per month. These measurements significantly exceed those of websites from traditional broadcasters, and provide not only national news and information, but aggregated access to local news, sports, and weather as well. Comparing the Miami Internet leaders in 2001 and today demonstrates the variety of sources available for news, information, opinion and entertainment.

In 2001, South Florida's online access was dominated by websites owned by America Online, Microsoft and Yahoo, each with a website specifically designed for the Miami-Ft. Lauderdale area.¹⁹⁷ In 2001, AOL reached 74.4% of Internet users, Microsoft reached 75.6% of users, and Yahoo reached 60.9%.¹⁹⁸ The *Sun-Sentinel's* website ranked 12th, with a reach of

¹⁹⁵ See *supra*, at 32-33.

¹⁹⁶ Media Metrix, March 2006.

¹⁹⁷ 2001 Tribune Comments at 29.

¹⁹⁸ See *id.*

11.6%. As in New York, Los Angeles, and Chicago, broadband has become more prevalent, and more websites and portals have obtained significant local usage in the market.

While many websites produced by traditional media outlets have grown in popularity since 2001, including websites operated by Tribune, Internet usage in 2006 reflects more vibrant competition in the Miami DMA than ever before. For example:

- * AOL News, Yahoo! News and MSNBC are still among the seven most accessed websites in the market, but at least 40 websites reach 1% or more of the market.¹⁹⁹
- * AOL News reaches 16.4% of Internet users, MSNBC.com reaches 12% of all Internet users, and Yahoo! News reaches 11.9% of all Internet users. On a monthly basis, these three sites each reach between 238,000 and 326,000 unique visitors.
- * Today, *New York Times Digital* has the greatest reach in the market, with 21.5% of all Internet users. More than 425,000 unique visitors access *New York Times Digital's* website, more than any other website in the market.
- * Tribune's reach in the market, as of March 2006, was just over 13%, with just over 260,000 unique visitors per month.
- * Ten website operators reach more than 100,000 users per month in Miami, and approximately 20 websites reach 50,000 or more unique visitors, including websites operated by traditional media like the in-market publishers of the *Miami Herald*; the four major broadcast networks; and out-of-market publications like the *The Washington Post*. Numerous independent and non-traditional websites are included among the more than 30 websites, including sites operated by Internet Broadcasting Systems, Slate.com, Cox Newspapers, Village Voice Media, Wunderground.com, WSJ.com, and Time.com, which reach more than 25,000 unique visitors.
- * A number of independent Blogs dedicated to the Miami area can be identified, including Metroblogging Miami (<http://miami.metblogs.com>), Critical Miami (www.criticalmiami.com), Miami Beach 411 (www.miamibeach411.com), Hello Miami (www.heloomiami.com/blog), Babalu Blog (www.babalublog.com), Miami Art Exchange (<http://miamiartexchange.typepad.com>), Miami Nights (www.miaminights.com), Miami New Times (<http://news.miaminewtimes.com/blogs>), Greener Miami (www.greenermiami.com), FLAblog (www.flablog.net), to name just a few.

¹⁹⁹ Reach data based upon Media Metrix data for March 2006.

As the large and diverse number of websites that provide local news and information for South Floridians reflects, there is no shortage of media outlets in the Miami-Ft. Lauderdale DMA.

5. Hartford-New Haven Market.

Hartford-New Haven DMA is the 28th largest DMA in the United States with more than 1 million television homes. Because of its location in the northeast corridor, Hartford residents have access to local television stations from four different states: Connecticut, Massachusetts, New York, and Rhode Island. Further, because of the market's proximity to both New York City and Boston, Hartford benefits from diverse media sources from two top-5 markets.²⁰⁰ The Hartford market is diverse and competitive with 11 television stations owned by seven different owners, 76 terrestrial radio stations with 44 different owners, and 12 daily newspapers with 8 different owners. In Hartford, Tribune publishes the *Hartford Courant*, and owns and operates WTIC-TV, Channel 61, a Fox Network affiliate, and WTXN, Channel 20, a CW Network affiliate.²⁰¹

Television Stations. There are 11 television stations licensed to the Hartford DMA (an increase of five from the six stations in 1975).²⁰² These stations are owned by seven different owners. Tribune owns a duopoly in the market, as does LIN Television Corporation. Like other markets, broadcast television ratings in Hartford are generally in decline; this is not surprising considering the emergence of new and different sources of news and information since

²⁰⁰ Providence, Rhode Island and Springfield, Massachusetts media outlets also reach portions of the Hartford market.

²⁰¹ As with New York and Los Angeles, the *Hartford Courant* and WTIC-TV are commonly owned pursuant to footnote 25 of the FCC's original Report and Order adopting the Rule, and the *Hartford Courant* and WTXN have been commonly owned pursuant to grants of temporary waivers.

²⁰² See Tribune 2001 Comments at 30.

1975. As indicated in the Table below, in 1975 the highest-rated station earned a 34 share (WFSB), a 14 share in 2001, and a 13.5 share in 2006.

Hartford TV Stations With A 1 Share Or Greater²⁰³

Station	Owner	Affiliation	1975	2001	2006
WFSB, Channel 3	Meredith	CBS	34	14	13.5
WTNH, Channel 8	LIN Television	ABC	23	10	10.2
WVIT, Channel 30	NBC Universal	NBC	15	13	9.5
WTIC-TV, Channel 61	Tribune	FOX	NA	5.1	6.2
WTXX, Channel 20	Tribune	CW	<1	2	1.9
WCTX, Channel 59	Lin Television	MyNetworkTV	NA	2	1.5
WHPX, Channel 26	Ion	PAX	NA	1	<1
WEDH, Channel 24	Conn. Public TV	PBS	<1	2	NA

Unique among all DMAs, Hartford television stations always have lost share to television broadcast service from New York, Boston, Providence, and Springfield stations that receive ratings (and some even from over-the-air reception) in parts of the DMA. Stations available to residents of the Hartford-New Haven DMA include:

- * From New York, stations owned by the four major networks, WCBS-TV, WNBC-TV, WNYW-TV, WABC-TV, and WWOR-TV, one other commercial station, and WPIX-TV, and the public television station WNET-TV.
- * From Boston, two network stations, WCVB-TV (ABC) and WBZ-TV (CBS), two other commercial stations, WSBK and WLVI, and a public television station WGBH-TV.
- * From Providence, a CBS affiliate (WPRI) and an NBC affiliate (WJAR-TV), along with a public television station (WSBE).
- * From Springfield, an NBC affiliate (WWLP) and ABC affiliate (WGGB), along with a public television station (WGBY).²⁰⁴

²⁰³ Audience shares are from the Nielsen Station Index for May of the year listed.

²⁰⁴ See Tribune 2001 Comments, at 30; *Broadcasting & Cable Yearbook 2005*.

Traditional television station counts simply do not work in assessing the Hartford-New Haven DMA, where so many residents have strong interests in local news and information concerning out of market cities, most notably New York City and Boston. Even in 1975, the six stations licensed to the market received less than a collective 75 share. As of 2001, the share of the in-market television stations had been reduced to just under 50;²⁰⁵ in 2006, that collective share has been reduced to less than 44, as viewers watch both out-of-market stations and cable channels.

While audience share for the once-dominant stations has declined steadily since 1975, the amount of local news programming produced each week has increased significantly, and competition for news viewers is robust. As of July 2001, all eight local commercial stations produced news programming (in 1975, only three local stations produced newscasts). Today, the current highest-rated station's evening newscast earns a 7.9 rating (WFSB), down from a 13 (WFSB) in 1975 and about the same as the 7.7 rating (WVIT) in 2001.

Hours and Ratings of Local News Per Week

Station	Affiliation	Hours/Wk 2001	Hours/Wk 2006	1975 Rat	2001 Rat	2006 Rat
WVIT, Channel 30	NBC	30	38.5	4	7.7	7.2
WHPX, Channel 26	PAX	5	NA	NA	<1	NA
WRDM, Channel 13	Telemundo	2.5	NA	NA	<1	NA
WFSB, Channel 3	CBS	33.5	39	13	6.2	7.9
WTNH, Channel 8	ABC	24.5	31.5	11	5.1	6.1
WCTX, Channel 59	MyNet	3.5	7.5	NA	1.4	1.7
WTIC-TV, Channel 61	FOX	6.5	11	NA	5.1	7.3
WTXX, Channel 20	CW	3.5	5	NA	1.2	*
Total Hours		109	132.5			

* WTIC and WTXX are commonly-owned, and share is reported collectively.

²⁰⁵ The Hartford DMA was the first DMA where in-market network affiliates earned less than a 50% share, and then the first DMA where all in-market stations collectively earned less than a 50% share.

As the table reflects, together, Hartford television stations produce at least 132.5 hours of local news, an increase from 109 hours in 2001, and a far cry from 1975, when only three “news” stations were in the market. As in other markets, the continuing increase of available news sources has eroded news ratings.

MVPD Presence. Together, cable, DBS and other MVPDs currently serve more than 94% of the television households in the DMA, up from an already high aggregate of 90% in 2001; currently, more than 82% of the homes in the DMA subscribe to cable and over 12% of the homes subscribe to DBS.²⁰⁶ Together, these measurements indicate that very few households receive their broadcasts over the air. Indeed, the DMA has the second highest cable subscribership penetration of any market in the top 50. In 2001, cable system subscribers received a minimum of 80 channels, while today, these cable systems and other MVPDs now deliver between 250 and 400 channels.²⁰⁷

As discussed previously, cable networks increasingly take audience share of viewers from broadcast affiliates.²⁰⁸ For example:

* In 2006, 11 cable networks (including USA, the Disney Channel, TNT, the FOX News Channel, Lifetime and CNN, ESPN, New England Sports Network and the YES Network) ranked among the top 15 channels viewed and another four (including the History Channel and Spike TV) made the top 20.²⁰⁹

²⁰⁶ See Nielsen Market Data, for July 2006, TVB Research Central, Market Track data, Hartford DMA, found at www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=38.

²⁰⁷ 2001 Tribune Comments at 24; *supra* at 29-30 (discussion of DBS programming); www.comcast.com.

²⁰⁸ See *supra* at 39-40 (discussing MVPD programming in New York).

²⁰⁹ The source for ratings is Nielsen LPM Household, for May of the year indicated.

* In 2006, the 15 cable networks that ranked among the top 20 rated video channels in the Hartford DMA exceeded 6 of the 11 broadcast stations in the Hartford DMA.

* In 2006, twenty-six cable channels earned a 0.6 audience rating or greater, and exceeded 5 of the broadcast stations in the Hartford DMA.²¹⁰

* In 2001, 8 broadcast stations and 36 cable networks each earned a share of one or greater. In 2006, only 6 broadcast stations had such a share, while 38 cable networks earned comparable ratings.²¹¹

* In addition to the 38 cable channels with ratings over 0.4, more than 30 other satellite programming channels received greater than a 0.1 rating in the Hartford DMA, including new or strengthened cable networks like SNY, BET, the Soap Channel, Headline News, and the Outdoor Life Network.²¹²

Newspapers. There are 12 daily newspapers published in the Hartford-New Haven DMA, with eight different owners of these papers. In addition to the *Hartford Courant*, the *New Haven Register* and (Bridgeport) *Connecticut Post* also have significant circulations.

Top Daily Newspapers	1975 Circulation	2001 Circulation	2006 Circulation
<i>Hartford Courant</i>	179,569	198,651	184,254
<i>New Haven Register</i>	100,903	100,108	84,546
<i>(Bridgeport) Connecticut Post</i>	89,705	76,045	77,469

The circulations for both the *Hartford Courant* and the *New Haven Register* have both decreased over the past five years. These papers compete not only against each other, but also against Hartford favorites *The Boston Globe* and *The New York Times*. Additionally, other communities have daily newspapers published, including the *Journal Inquirer* (Manchester), *The Day* (New London), the *Norwich Bulletin* (Norwich), and the *Republic-American* (Waterbury).

²¹⁰ In addition to the channels discussed above, these cable channels included the Cartoon Network, the Family Channel, Nickelodeon, The Learning Channel, and the Travel Channel.

²¹¹ See Tribune 2001 Comments at 31-32. As discussed above, there are many more video program channels available today than were available 5 years ago. See *supra* at 30 (satellite program channels more than doubles between 2002 and 2006).

²¹² In 1975, cable channels were in their infancy, and did not receive such audience shares.

In addition to the daily newspapers, the Hartford DMA is home to a robust market of weekly newspaper competitors. BIA has identified 63 weekly newspapers published by 15 owners in the Hartford DMA. These weekly papers serve a diverse array of communities and special interests throughout the market. Among these weekly publications are:

- * More than 35 community weeklies published by The Journal Register Company, covering nearly the entire state of Connecticut.
- * Five *Inquirer* weeklies published in Hartford, New Haven, Bridgeport, Waterbury and Springfield by William Hales.
- * Several Hometown Publishing weeklies, including the *Easton Courier* and *Fairfield Today*.
- * Five Shore Publishing weekly newspapers that circulate to between 5,000 and 170,000 readers in New Haven and surrounding communities.

Radio Stations. The Hartford DMA currently is home to 76 commercial and non-commercial AM and FM radio stations, owned and operated by 44 separate entities.²¹³ Of the 76 stations in the DMA, 20 English-language radio stations, operated by 12 different broadcasters, offer varied formats that focus on news, talk, sports, information, education and religion. Five stations operated by 5 different broadcasters offer Hispanic or ethnic formats. Fifty-one stations, operated by 26 different broadcasters, offer a variety of music formats, and 1 station offers a children's format. Finally, in addition to terrestrial radio, as discussed previously, both XM and Sirius offer satellite radio programming on a subscription basis to residents of the Hartford-New Haven DMA, each with over 130 channels of format and variety.²¹⁴

²¹³ In the more limited Hartford radio geographic market as defined by the rules adopted in the 2003 Order, there are 34 radio stations owned by 22 different owners.

²¹⁴ See *supra*, at 32-33.

The Internet. Today, more than 1.5 million people in the Hartford DMA access the Internet, and more than 71% of those users have a residential broadband connection.²¹⁵

Websites owned by The New York Times, Yahoo! News, MSNBC and AOL News all have strong presences in the online market in Hartford in 2006. While many websites produced by traditional media outlets have grown in popularity since 2001, including websites operated by Tribune, Internet usage in 2006 reflects vibrant competition in the DMA. For example:

* AOL News, Yahoo!News and MSNBC are still among the 8 most accessed websites in the market, but approximately 50 websites reach 1% or more of the market.²¹⁶

* Today, *New York Times Digital* has the greatest reach in the market, with 28.6% of all Internet users. More than 436,000 million unique visitors access *New York Times Digital's* website, more than any other website in the market.

* AOL News reaches 14.4% of Internet users, MSNBC.com reaches 17.7% of all Internet users, and Yahoo! News reaches 27.3% of all Internet users, the second-highest of any website. On a monthly basis, these three sites each reach between 219,000 and 416,000 million unique visitors.

* Tribune's reach in the market, as of March 2006, was 20%, with just over 300,000 million unique visitors per month.

* Fifty-two website operators reach more than 10,000 users in the Hartford DMA, including websites operated by independent and non-traditional online service providers like Internet Broadcasting, Slate.com, military.com, and wunderground.com. Fox, CBS and NBC also have affiliated websites that reach more than 40,000 users in Hartford.

* A large number of independent Blogs dedicated to the Hartford area serve the public, including Connecticut Citizens in Action (<http://ct-cia.blogspot.com>); Connecticut Commentary (<http://donpesci.blogspot.com>); Connecticut Local Politics (www.connecticutlocalpolitics.blogspot.com); CT News Junkie (www.ctnewsjunkie.com); Save Connecticut (www.saveconnecticut.org); Southington Live (www.southingtonlive.blogspot.com); The West Hartford Blog (www.whdad.wordpress.com); This is CT (www.thisisct.net.bloghtml); and Hartford Blog (www.hellohartford.com/blog/index.cfm), to identify just a few from Connecticut Weblogs, a service that identifies such blogs.²¹⁷

²¹⁵ Media Metrix, March 2006.

²¹⁶ Reach data based upon Media Metrix data for March 2006.

²¹⁷ Connecticut Weblogs identifies at least 35 blogs addressing issues in Connecticut.

As the large and diverse number of websites that provide local news and information for the Hartford area reflects, there is no shortage of media outlets in the Hartford-New Haven DMA.

C. Increases in the Number of Media Outlets in These Large Markets Further Support Repealing the Rule, with Cross-ownership Limits Applied Only to Smaller Markets Demonstrably At Risk.

As demonstrated above, consumers in Tribune's five cross-ownership markets can select from a growing number of choices for news and information. No single media outlet dominates the provision of news and information to the public in any of these markets; in fact, several combined media ventures cannot do so. With so many new entrants and competitors for viewers and readers, the reach for traditional media entities subject to the Rule (broadcast stations and daily newspapers) has declined to the point where none of these traditional media are able (either alone or together) to dominate public discourse, or even impede the expression of diverse viewpoints. As review of the data compiled above demonstrates, local television stations' audience shares and daily newspaper circulation are in decline, cable network ratings are increasing, radio formats are incredibly varied and listenership is increasingly fragmented, and consumers are spending more time on the Internet. Websites on the Internet now serve as substitutes for traditional media, aggregating traditional and non-traditional media on a level playing field, and making it possible for countless participants to provide news, information and opinions. The sheer number and diversity of media outlets in each of these markets demonstrates that there is no need to artificially protect theoretical viewpoint diversity by segregating broadcast television stations from newspaper owners.

As Tribune demonstrated in its 2001 Comments, competition has resulted in sharply reduced ratings for television stations, both overall and for evening news programs.²¹⁸ This review of Tribune's five cross-ownership markets demonstrates that the downward trend in broadcast television ratings has continued unabated over the past five years, and that common ownership of an in-market newspaper does not protect, insulate or otherwise lessen such ratings declines. Likewise, the declining circulation of daily newspapers from 1975 to 2001 reflected in the 2001 Tribune Comments, and the decrease in time spent reading them, not only has continued, but its pace has accelerated.²¹⁹ Neither local broadcast stations nor local newspapers can dominate public access to news and information or the debate on public issues generally.

Instead, cable systems and alternative MVPDs like DBS providers and telephone companies have assumed a greater role in the aggregation of news, information, and entertainment programming, by virtue of their provision of video signals and broadband service. There has been a sharp increase in the amount of national and regional news, sports and information channels, along with cable providers' increased channel capacity and ubiquity.²²⁰ As the review of the nation's media marketplace showed, MVPDs, including cable and DBS, now can provide service anywhere, and serve 85% to 95% of the households in many DMAs, including the five discussed above. All of these developments suggest that broadcasters play a much lesser role in affecting viewpoint diversity than the Commission even imagined in the 2003 *Order*, and certainly than existed in 1975 at the Rule's adoption.

²¹⁸ 2001 Tribune Comments at 33-34.

²¹⁹ *Id.* at 35.

²²⁰ *See supra* at 30-33. Channel capacity on most systems now exceeds 250 channels, and there are more than 531 satellite-delivered networks from which to choose.

With the rapid deployment of broadband and the quadrupling in the last four years of residential broadband users, it could not be clearer that broadcasters and newspapers do not have the ability to dominate the delivery of news and opinion, much less entertainment. As Tribune's five-market review shows, the online media marketplace is a dynamic source of countless options for obtaining news and information, with the control over access to that information firmly held by the consumer. Hundreds of national and local websites stand ready to provide almost any information that can be sought.

Given all of these developments, as well as the increasing costs of providing the highest quality coverage of world, national and local events,²²¹ the public would be best served by permitting newspaper-broadcast combinations in all but the smallest "at risk" markets. The Commission, and the courts, need not finely calibrate the "bright line" demarcations between permitted or prohibited combinations. Given the development of the Internet in the years since the Commission developed its record for the *2003 Order*, the FCC must recognize that the Internet contributes significantly to public access to diverse and antagonistic viewpoint sources. Indeed, failure to account for the Internet's current pervasive role would be arbitrary and capricious. The burden of establishing the need to continue a cross-ownership ban in even the smallest markets must rest on those who assert that the benefits from cross-ownership and competition from *all* sources does not justify a total repeal because a market is at risk.

²²¹ *Id.* at 36-37.

D. The Commission Should Not Wait To Eliminate The Burden Of The Rule On Broadcasters and Newspaper Owners.

The Commission can and should liberalize the Rule's blanket prohibition as soon as possible, and before it addresses the other issues on remand from the Third Circuit. Repeal of the Rule and the establishment of any protections for any demonstrably "at risk" markets is now justified by comments filed in multiple proceedings, and the findings of the Commission in the *2003 Order* upheld by the Third Circuit.²²² The findings, in addition to the Rule's different procedural posture previously established by *Tribune*, warrant separate and early review by the Commission.²²³ Since the Rule's adoption 30 years ago, and even bipartisan calls for its revision 10 years ago, the ownership restrictions on television station duopolies, radio stations, cable systems and television stations, and even dual networks have been significantly reduced.²²⁴ As then-Commissioner Martin has stated, "Contrary to claims [that] acting on this one rule would be unfair to other relevant industries, the Commission long ago gave an advantage to other licensees by relaxing their local ownership restrictions. . . . [I]t is the newspaper industry that has been prejudiced by the Commission's failure to act on the 1998 and 2000 Biennial Review Reports' conclusions that [the Rule] should be reviewed and likely modified."²²⁵

The only fair course is to proceed immediately to permit newspaper-broadcast combinations, regardless of the timing on other actions on remand in the omnibus proceeding. In a similar situation, the Court of Appeals for the District of Columbia Circuit vacated the cable-

²²² See *supra* at 6-15; *Newspaper-Broadcast NPRM*, 16 FCC Rcd. 17283 (2001); *Notice of Inquiry*, 11 FCC Rcd. 13003 (1996).

²²³ See *Tribune Comments*, January 2, 2003, at 3-6.

²²⁴ See *supra* at 14.

²²⁵ *2002 Biennial Review NPRM*, 17 FCC Rcd. 18503 (Separate Statement of Commissioner Kevin J. Martin).

broadcast cross-ownership rule where it found that retention of the prohibition while the FCC completed a rulemaking on remand would significantly harm cable operators and broadcasters.²²⁶ In light of the findings of the Commission upheld by the Third Circuit, and the D.C. Circuit's decision vacating the similar cable-broadcast rule for lack of evidence and justification, the Commission should move to permit newspaper-broadcast cross-ownership in any but the smallest "at risk" markets independent of any other action based upon the *FNPRM*.

IV. The Rule Is Unconstitutional.

The Commission should acknowledge that continued enforcement of any newspaper-broadcast prohibition in any but the smallest demonstrably "at risk" markets is unconstitutional. The Third Circuit in *Prometheus* rejected constitutional challenges to the rule, but it did so largely because it believed it was bound to do so by Supreme Court precedent. *See Prometheus*, 373 F.3d at 401-02 (citing *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (only the Supreme Court can overrule its own precedents)). However, those precedents are decades old, and as even the Third Circuit acknowledged, they rest on facts that have changed dramatically in the intervening years. There is no doubt that the Supreme Court will review these issues following an appeal of the Commission's order in this remand proceeding. The Commission should therefore recognize – as numerous lower court judges have already – that the constitutional underpinnings of the Rule have become extremely dubious and almost certainly could not be sustained as applied in most circumstances today. At a minimum, and following the guidance of the Telecommunications Act of 1996, the Commission should err on the side of

²²⁶ *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1039 (D.C. Cir. 2002).

deregulation to avoid the grave constitutional issues that today's Supreme Court would undoubtedly take very seriously, notwithstanding the Third Circuit's rulings.

The Rule is unconstitutional; it cannot survive the appropriate level of First Amendment review and it violates the equal protection clause of the Fifth Amendment. The Rule does not implicate the scarcity doctrine and therefore is subject to heightened scrutiny under the First Amendment. Even if the scarcity doctrine is implicated, the Commission should recognize that the proliferation of media outlets (let alone media industries) since the 1970s renders the scarcity doctrine invalid today. The Rule also violates the equal protection component of the Fifth Amendment, because it unconstitutionally singles out newspapers from among non-broadcast major media for special speech restrictions.

A. Because The Rule Does Not Implicate the Scarcity Doctrine, Heightened Scrutiny Is The Appropriate Level of Review, and The Rule Cannot Survive Heightened Scrutiny.

1. The Rule Does Not Implicate Scarcity.

Courts have rejected First Amendment challenges to the newspaper rule based solely on the assumed applicability of the "scarcity doctrine." As the Supreme Court has explained, "[w]hen there are substantially more individuals that want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable right to broadcast comparable to the right of every individual to speak, write, or publish."²²⁷ Because of this "scarcity" of licenses, and the necessity of government allocation of these limited resources among potential users,

²²⁷ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969).

courts have applied a deferential standard of review under the First Amendment to the FCC's regulation of broadcast licensing, and have allowed restrictions on broadcast ownership and speech that would be blatantly unconstitutional if applied to other media.²²⁸

The Rule, unlike other FCC ownership rules, does not implicate the scarcity doctrine. The Commission's only rationale for the newspaper rule today is to promote viewpoint diversity.²²⁹ But the newspaper rule has no impact whatsoever on the degree of viewpoint diversity available over the airwaves; it merely identifies a prohibited class of broadcast owners: publishers of daily newspapers. The number of separate owners of broadcast stations within a given market is determined solely by the Commission's other ownership rules: the local television or "duopoly" ownership rule, the local radio ownership rule, and any "one-to-a-market" rule. Whether one of these stations is owned by a newspaper does not change the number of different entities that hold the "scarce" number of licenses within that market. The total number of different licensees, and thus the theoretical degree of diversity of viewpoints represented, is the same either way.

The Rule is designed to promote viewpoint diversity within a broader class of speakers: the class that includes both broadcast stations and newspapers. But *that* class of speakers *is not characterized by scarcity*, at least not in the constitutional sense. Because anyone can start a newspaper (in theory anyway), this broader class of speakers (encompassing both

²²⁸ *National Broadcasting Co. v. FCC*, 319 U.S. 190, 226-27 (1943).

²²⁹ *2003 Order*, ¶ 442; *Prometheus*, 373 F.3d at 398.

broadcast stations and newspapers) is infinitely expandable.²³⁰ Indeed, the Rule is predicated on the assumption that broadcast stations and newspapers are equivalent platforms for speech on local issues, but it fails to grapple with the fact that this set of equivalent platforms is not finite; anyone that loses out on a broadcast license, under the Rule's assumption of equivalence, can simply start or purchase a newspaper. For this reason, the issue of newspaper-broadcast cross-ownership does not arise in a context in which there are more individuals that want to speak than there are platforms for speech;²³¹ for First Amendment purposes, anyone who wishes to gain entry into this broader set of speakers may do so.

2. The Rule Is Subject To Heightened Scrutiny.

Because the Rule is a content-based regulation aimed at a class of speakers or speaking platforms not characterized by scarcity, it is subject to strict scrutiny, rather than the deferential standard of *Red Lion*.²³² Outside the scope of the scarcity doctrine, it is well-settled that the “government may [not] restrict the speech of some elements of our society in order to

²³⁰ See generally *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

²³¹ Cf. *Red Lion*, 395 U.S. at 388.

²³² *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). There can be no doubt that the Rule today is a content-based restriction on speech. Although the Commission originally adopted the Rule on both diversity and antitrust grounds, see *NCCB*, 436 U.S. at 795-96, the Commission made clear in the 2003 Order that the *only* basis for the Rule today is to promote viewpoint diversity. See 2003 Order, ¶¶ 354-55. Any conscious attempt to regulate the diversity of viewpoints available in the broader media (encompassing both newspapers and broadcast stations) is necessarily content-based. See, e.g., *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (restrictions are content-based when not “justified without reference to the content”). Accordingly, well-settled precedent subjects the Rule to strict scrutiny. E.g., *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 117 (1991). At a minimum, the Rule is subject to at least the intermediate scrutiny that the Supreme Court applied to the must-carry rules in *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 (1994). It should be emphasized, however, that the Court upheld the must-carry rules under that standard *only* because they could be supported by a content-neutral, economic/antitrust justification; the Commission has already conceded, however, that there is no longer any such justification for the newspaper rule, 2003 Order, ¶ 332, and no party appealed that finding to the Third Circuit, see *Prometheus*, 373 F.3d at 398 (“Citizen Petitioners object to the localism and diversity components of the rationale,” but not to the FCC’s conclusion that there is no economic justification for the Rule).

enhance the relative voice of others.”²³³ There is no constitutionally permissible rationale for attempting to regulate debate in a context in which the opportunity to speak is unlimited. Indeed, a prohibition on combining speakers (broadcast stations and newspapers) where there is an unlimited ability to enter the market of one of the speakers (newspaper publishing) does nothing to enhance viewpoint diversity; it merely arbitrarily restricts the speech rights of those speakers. The Rule today is thus no more constitutional (or sensible) than a rule aimed at increasing “viewpoint diversity” by prohibiting broadcast stations from operating an Internet site, or prohibiting broadcast owners from making public speeches.

Despite the holding of the Third Circuit, no court has considered this particular First Amendment objection to the Rule. Although the Supreme Court upheld the rule in *FCC v. NCCB*,²³⁴ it considered and rejected a different set of arguments. Petitioners in that case argued that the Commission had no *statutory* authority to increase diversification of ownership in the broader mass media, because the Commission’s jurisdiction is limited to “communications by wire or radio.” 47 U.S.C. § 152(a). The Supreme Court rejected that statutory argument on the ground that the Rule fell within the Commission’s authority to award licenses in the “public interest.” *NCCB*, 436 U.S. at 794-96. With respect to the Constitution, Petitioners argued only that (1) the First Amendment prohibits categorically suppressing the broadcast speech of newspapers to boost the speech of others;²³⁵ (2) the Rule unconstitutionally conditioned a government benefit (a broadcast license) on giving up a constitutional right (to publish a

²³³ *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (per curiam); see also *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791 n.30 (1978).

²³⁴ 436 U.S. 775 (1978).

²³⁵ *Buckley*, 424 U.S. at 48-49.

newspaper);²³⁶ and (3) the Rule violated equal protection by unconstitutionally singling out newspapers for special speech restrictions. In rejecting these arguments, the Court relied heavily on the scarcity doctrine, but no party appears to have argued that the newspaper rule does not implicate that doctrine in the first place.²³⁷

B. Even If The Scarcity Doctrine Applies, It Is No Longer Valid.

If the Commission believes the scarcity doctrine is applicable, then it has an obligation to consider whether the explosion in the number and variety of media outlets since the adoption of the rule in 1975 has rendered the doctrine invalid.²³⁸ This record is already replete with evidence that the scarcity doctrine is no longer valid; indeed, the Commission's previous order contains abundant findings that necessarily lead to the conclusion that the scarcity doctrine has been overtaken by events. As demonstrated above, in the last several years, even since the decision of the Third Circuit in *Prometheus*, the Internet revolution and adoption of broadband service have ensured that traditional notions of scarcity no longer can serve as the foundation for the Rule or any other significant restriction on broadcast speech by newspaper publishers (or newspaper speech by broadcasters).

²³⁶ See *Speiser v. Randall*, 357 U.S. 513 (1958).

²³⁷ See *NCCB*, 436 U.S. at 799 ("No one here questions the need for such allocation and regulation [of scarce licenses]"). In rejecting the first argument in particular, the Court relied principally on the statement that "the broadcast media pose unique and special problems not present in the traditional free speech case," *NCCB*, 436 U.S. at 799 (quoting *Buckley*, 424 U.S. at 50 n.55), and that the Commission could act to enhance the volume and quality of coverage of public issues on broadcast stations through regulation, *NCCB*, 436 U.S. at 800 (citing *Red Lion*).

²³⁸ *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998) (Commission may well "be thought arbitrary and capricious if it refused to reconsider its rule in light of persuasive evidence that the scarcity rationale is no longer tenable").

The Supreme Court has indicated that it would be appropriate to revisit the spectrum scarcity rationale (and the lesser protection afforded broadcast speech) in any of three circumstances, each of which is present here.²³⁹ First, in *Red Lion* itself, the Court stated that “if experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications.”²⁴⁰ As discussed above, the Commission itself already has found that the Rule “actually works to inhibit [local news and information] programming” because combinations of daily newspapers and broadcast stations enhance the quality and quantity of local coverage.²⁴¹ The Commission also has found benefits for the diversity of viewpoints arising from newspaper-broadcast combinations: “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints, as measured by third parties.”²⁴² The Rule thus has had exactly the speech-inhibiting effect that the Supreme Court indicated should call into question the merits of subjecting broadcast speech to lesser First Amendment protections.

Second, the Supreme Court long ago stated that, due to the growth of alternative channels of communication, “[s]carcity may soon be a constraint of the past, thus obviating the

²³⁹ The Commission itself indicated in the notice introducing this proceeding that a higher First Amendment standard may be required, *1998 Biennial Regulatory Review*, 15 FCC Rcd. 11058, ¶¶ 115-117 (2000) (suggesting that intermediate scrutiny may be applicable).

²⁴⁰ *Red Lion*, 390 U.S. at 393.

²⁴¹ See *supra*, at 6-7; 2003 Order ¶ 342, *aff’d*, *Prometheus*, 373 F.3d 398-99.

²⁴² 2003 Order, ¶ 358.

concerns expressed in *Red Lion*.”²⁴³ When the Supreme Court decided *Red Lion* and *NCCB*, the cable television industry was in its infancy and served mainly as a retransmitter of broadcast programming, and UHF television stations and FM radio stations had yet to mature into providers of news and information. The scarcity identified in Supreme Court decisions of the 1970s has disappeared. For example, only a small percentage of households lack access to cable television or direct broadcast satellite service; the Commission found in 2003 that “there are more than 308 satellite-delivered national non-broadcast television networks available for carriage over cable, DBS, and other [video] systems,” with other channels dedicated to local public affairs programming and pay-per-view offerings.²⁴⁴ Satellite radio, the FM radio service and UHF television service have matured from upstart challengers to AM radio stations and VHF television stations to mature sources of news, information and entertainment.²⁴⁵ And the Internet as a popular medium did not exist when *Red Lion* was decided, but now functions as a principal and pervasive source of information and news, often outpacing its broadcast, cable, and print competitors.²⁴⁶

Third, the Supreme Court also acknowledged more than 20 years ago that “[t]he prevailing rationale for broadcast regulation based on spectrum scarcity has come under increasing criticism in recent years,” and the rationale might be reexamined upon “some signal

²⁴³ *Columbia Broad. Sys., Inc. v. Democratic National Comm.*, 412 U.S. 94, 158 n.8 (1973) (“*CBS*”) (plurality opinion) (“It has been predicted that it may be possible within 10 years to provide television viewers 400 channels through the advances of cable television.”).

²⁴⁴ 2003 Order, ¶ 123; *Turner I*, 512 U.S. at 628-29.

²⁴⁵ These new challengers include at least three of Tribune’s television stations in the five cross-ownership markets that were not even on the air in 1975 when the Rule was adopted.

²⁴⁶ See *supra* at 15-25; *Ashcroft v. ACLU*, 535 U.S. 564, 566 (2002) (plurality opinion).

from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required.”²⁴⁷ Both the Commission and Congress have sent that signal. “In the 1985 Fairness Report, the Commission sought to respond to the Supreme Court’s invitation to send it a ‘signal’” and “found that the ‘scarcity rationale,’ which has historically justified content regulation of broadcasting, is no longer valid.”²⁴⁸ Others have noted this result: “the FCC has given the ‘signal’ referred to in *League of Women Voters*, *supra*. The Commission has indicated ... that the problem of spectrum scarcity is rapidly disappearing.”²⁴⁹

Similarly, Congress in the 1996 Telecommunications Act recognized that technological and competitive developments had transformed the nation’s media. Congress there repealed or relaxed numerous ownership restrictions,²⁵⁰ and it directed the FCC to conduct a biennial review “to determine whether any of such [remaining] rules are necessary in the public interest” – commanding the FCC to “repeal or modify any regulation it determines to be no longer in the public interest.”²⁵¹ When the Commission undertook that review in 2003, it concluded that “the local media marketplace has changed dramatically” since the Rule’s adoption in 1975 and documented the explosive growth of cable television, the Internet, and

²⁴⁷ *FCC v. League of Women Voters*, 468 U.S. 364, 376 n.11 (1984).

²⁴⁸ *Meredith Corp. v. FCC*, 809 F.2d 863, 867 (D.C. Cir. 1987) (internal citation omitted); *see Syracuse Peace Council v. WTVH*, 2 FCC Rcd. 5043, ¶ 65 (1987) (subsequent history omitted) (“the scarcity rationale developed in the *Red Lion* decision and successive cases no longer justifies a different standard of First Amendment review for the electronic press”).

²⁴⁹ *Arkansas AFL-CIO*, 11 F.3d at 1442-43 (Arnold, R., C.J., concurring in judgment) (citing *Syracuse Peace Council*, 2 FCC Rcd. 5043 (1987)).

²⁵⁰ 1996 Act §§ 202(a)-(g), 110 Stat. at 110.

²⁵¹ *Id.* § 202(h), 110 Stat. at 110.

other electronic media.²⁵² As explained above, those trends have only intensified in the last three years. Indeed, the Commission correctly concluded that “the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans.”²⁵³

While Tribune recognizes that the Third Circuit indicated that it believed the scarcity doctrine was still valid, and applied a deferential First Amendment standard in reviewing the Rule,²⁵⁴ the Third Circuit’s two-sentence analysis of this issue puts it at odds with many respected lower court jurists of the last 20 years, from across the political spectrum.²⁵⁵ Tribune maintains that in this broadband-based Internet media marketplace, over-the-air television broadcast stations do not serve as the same “scarce” commodity as they served at the time of the adoption of the Rule.²⁵⁶

²⁵² 2003 Order, ¶¶ 86-128.

²⁵³ *Id.* ¶¶ 365-367.

²⁵⁴ *Prometheus*, 373 F.3d at 402 (“[e]ven if we were not constrained by Supreme Court precedent, we would not accept the . . . contention that the expansion of media outlets has rendered the broadcast spectrum less scarce”).

²⁵⁵ See, e.g., *Telecommunications Research & Action Ctr. v. FCC*, 801 F.2d 501, 507-09 (D.C. Cir. 1986) (Bork, J., joined by Scalia and MacKinnon, JJ.); *Action for Children’s Television v. FCC*, 58 F.3d 654, 675 (D.C. Cir. 1995) (Edwards, C.J., dissenting) (“it is no longer responsible for courts to apply a reduced level of First Amendment protection for regulations imposed on broadcast based on the indefensible notion of spectrum scarcity”); *Syracuse Peace Council v. FCC*, 867 F.2d 654, 682-83 (D.C. Cir. 1989) (Starr, J., concurring); *Arkansas AFL-CIO v. FCC*, 11 F.3d 1430, 1443 (8th Cir. 1993) (en banc) (Arnold, R., C.J., concurring in judgment) (“The Supreme Court believed, almost 25 years ago, that broadcasting was sufficiently special to overcome this instinctive feeling of alarm [over threats to speech]. In my opinion, there is a good chance that the legal landscape has changed enough since that time to produce a different result.”); *Time Warner Entertm’t Co. v. FCC*, 105 F.3d 723, 724 n.2 (D.C. Cir. 1997) (per curiam) (Williams, J., joined by Edwards, C.J., Silberman, Ginsburg, and Sentelle, JJ., dissenting from denial of rehearing *en banc*) (“Partly this [criticism] rests on the perception that the ‘scarcity’ rationale never made sense And partly the criticism rests on the growing number of available broadcast channels”).

²⁵⁶ For this reason, and the likelihood of Supreme Court review of any continued restrictions on the speech of newspaper publishers, Tribune has presented this issue for Commission review.

C. The Newspaper Rule Violates Equal Protection.

Finally, the newspaper rule violates the equal protection component of the Fifth Amendment. In *NCCB*, the Supreme Court rejected an equal protection challenge to the rule because “the regulations treat newspaper owners in essentially the same fashion as other owners of the major media of mass communications,” which at the time included only newspapers and broadcast stations.²⁵⁷ As *Tribune* demonstrated in the Third Circuit, the Rule, and any other blanket prohibition on newspaper-broadcast common ownership, no longer can satisfy the *NCCB* test, because it unconstitutionally singles out newspapers among other non-broadcast major media, including cable and satellite programmers and Internet publishers. The Third Circuit rejected this argument in a very brief discussion, in the apparent belief that *NCCB* was dispositive notwithstanding the dramatic change in the status of cable and the Internet. But courts have not been asked that *NCCB* be overruled on this point; a simple and direct *application* of *NCCB* requires repeal of the rule. Newspapers are the only non-broadcast media today that are subject to any restrictions on the ownership of broadcast stations,²⁵⁸ and restrictions on common ownership of broadcast media that were adopted at the time the Rule was put into place have been either repealed in their entirety or significantly relaxed.²⁵⁹

In singling out newspapers for more restrictive prohibitions, the Commission requires heightened scrutiny under more recent Supreme Court decisions decided after *NCCB*. “[L]aws that single out the press, or certain elements thereof, for special treatment ‘pose a

²⁵⁷ *NCCB*, 436 U.S. at 801.

²⁵⁸ *Cf. Fox*, 280 F.3d at 1050-53 (vacating ban on cable-broadcast cross-ownership).

²⁵⁹ *See supra* at 14-15.

particular danger of abuse by the State;” this principle applies directly to government restrictions that distinguish between different classes of media outlets.²⁶⁰ Even if the restrictions are not content-based, rules that single out a medium for unique restrictions on speech are subject to heightened scrutiny and must be “narrow[ly] tailor[ed]” to and “no greater than is essential to furtherance” of a “substantial[]” government interest.²⁶¹ Continued enforcement of any prohibition on newspaper-broadcast cross-ownership that does not adequately recognize today’s media marketplace, including the presence of MVPDs and the Internet, cannot survive review under the equal protection standards of *NCCB* or the heightened review standards of later cases.

²⁶⁰ *Turner I*, 512 U.S. at 640-41.

²⁶¹ *Id.* at 662; see also *Minneapolis Star & Tribune Co. v. Minnesota Comm’r of Revenue*, 460 U.S. 575, 585, 592-93 (1983) (such differential regulation is “presumptively unconstitutional” and “places a heavy burden on the [government] to justify its action”).

Conclusion.

The facts have been clear for more than 10 years, in the record for five years, and the consequences of these facts have been recognized formally by the Commission for more than three years. More than two years ago the Third Circuit agreed that the Rule no longer served its intended purpose, but remanded the *2003 Order* for further evaluation of new limits and their supporting rationale. Now, only the desire for political compromise and the resultant need for “fine tuning” of “bright line” limits continues to impede newsgathering and presentation synergies that would permit improved television coverage and programming without sacrificing diversity. The Commission should promulgate expeditiously a rule that permits combinations of daily newspapers and television stations.

Respectfully submitted,

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